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MM

FILE:

[REDACTED]
[EAC 01 251 54091]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 09 2006**

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more

misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested, in a notice of intent to deny dated June 3, 2004, to submit the final court dispositions of all of his arrests, including the arrests listed below. In response, the applicant submitted records from the Arlington County Police Department and from the Fairfax Police Department:

1. The FBI report shows that on April 1, 1993, in Arlington, Virginia, the applicant was arrested for grand larceny. The applicant submits a Criminal History Record Information Request from the Arlington County Police Department, Arlington, Virginia, indicating that the applicant was convicted on July 13, 1993, of “Larceny from Auto – Misd.”
2. The FBI report shows that on May 20, 1993, in Fairfax, Virginia, the applicant (name used “ [REDACTED] ”) was arrested for Count 1, possession of burglarious tools; Count 2, grand larceny; Count 3, simple assault. The applicant submits a Local Adult Criminal Record Check from the Fairfax County Police Department, Fairfax, Virginia, indicating that the applicant was convicted of possession of burglary tools, as to Count 1, and was sentenced to 12 months in jail, and that a *nolle prosequi* was entered as to Counts 2 and 3.
3. The applicant submitted a Local Adult Criminal Record Check from the Fairfax County Police Department, Fairfax, Virginia, indicating that the applicant (name used “ [REDACTED] ”) was arrested on June 11, 1995, for driving while intoxicated-alcohol, and that “disposition not known.”
4. The FBI report shows that on February 24, 2005, in Richmond, Virginia, the applicant was arrested for obtaining money by false pretenses. The final court disposition of this arrest is not contained in the record although the applicant was requested to submit the court dispositions of all of his arrests.

The director denied the application on April 21, 2005, after determining that the applicant was ineligible for TPS because he had been convicted of two misdemeanor offenses.

On appeal, the applicant submits a Criminal History Record Information Request from the Arlington County Police Department and from the Fairfax County Police Department, both indicating that no arrest record was found. The applicant also submits a form letter dated May 2, 2005, from the 19th Judicial District of Virginia, Fairfax County General District Court, Fairfax, Virginia, regarding [REDACTED] judgment/conviction date: 6/14/93; 6/30/93; Case No.: unknown." The letter indicates that the referenced case no longer exists in the Fairfax County General District Court. Pursuant to Virginia Code §16.1-69.57, court records are destroyed at the expiration of the appropriate retention period [10 years]." The destruction of court records, however, is not evidence that the convictions had been dismissed. Further, it is noted that the letter further indicated that the records may still be on file in the Fairfax County Circuit Court, and that the applicant may wish to call the Circuit Court. There is no evidence that the applicant contacted the Circuit Court for additional information regarding his cases, or that he contacted the appropriate courts where his cases were heard.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions and because he failed to provide the final court dispositions of his arrests detailed in Nos. 3 and 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.