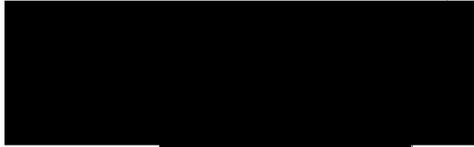


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FILE: [REDACTED]
[EAC 01 194 54572]

OFFICE: VERMONT SERVICE CENTER DATE: APR 04 2007

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:



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DISCUSSION: The approval of the initial application was withdrawn by the Director, Vermont Service Center.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

The applicant claims to be a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) on February 19, 2002, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew approval of the application because the applicant had failed to complete his annual re-registration by submitting court records pertaining to his two misdemeanor arrests.

On appeal, counsel for the applicant asserts that the applicant was denied his constitutional due process right of effective counsel, that the applicant is eligible for TPS, and submits additional evidence.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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.

The record reveals the following offenses:

- (1) On November 8, 2000, the applicant was convicted of Driving While Intoxicated, Case No. [REDACTED]
- (2) On June 26, 2004, the applicant was arrested by the Frederick County Maryland Sheriff's department and charged with Driving Under the Influence. (Case No. [REDACTED])
- (3) On September 9, 2004, the applicant was arrested by the Frederick County Maryland Sheriff's Department and charged with Driving While Intoxicated. (Case No. [REDACTED])

On appeal, counsel for the applicant asserts the defendant was denied his constitutional due process right to effective counsel, and that the applicant is eligible for TPS.

Counsel has submitted two court documents which indicate the applicant was convicted of each of the listed Driving While Intoxicated charges at (2) and (3) above. In addition, the applicant had already provided a document indicating that he was convicted of Driving While Intoxicated in the District Court of Maryland for Frederick County on November 8, 2000, (charge (1)).

The applicant is ineligible for TPS due to his conviction of at least three misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS 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.