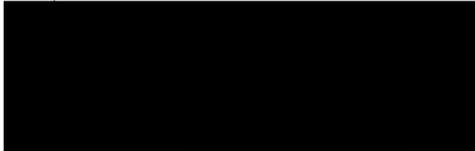


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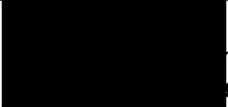
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 06 2007

[incorporated herein]

[SRC 01 175 55170]

IN RE:

Applicant:



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 Vermont Service Center. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to submit a final court disposition stemming from his arrest in 1993.

On appeal, counsel claims the applicant's eligibility for TPS.

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:

- The applicant was arrested on July 7, 1993, in Dade County, Florida, and charged with driving under the influence of alcohol or drugs causing serious injury, a felony.
- The applicant was arrested on August 15, 2001, by the Florida Highway Patrol Troop A and charged with one count of driving under the influence of alcohol or drugs, a misdemeanor.

- The applicant was arrested on October 17, 2001, by the Ocala Police Department, Ocala, Florida, and charged with hit and run, leaving the scene of a crash involving damage to property, a misdemeanor.
- The applicant was arrested on October 17, 2001, by the Ocala Police Department, Ocala, Florida, and charged with driving while license suspended habitual offender, a felony.
- The applicant was convicted on March 12, 2001, by the court in Marion County, Florida, of failure to appear and sentenced to a \$41.00 fine.

On appeal, counsel states that the crime of driving under the influence is not a crime of moral turpitude, and that in any case, it would qualify for the 212(a) waiver. The applicant does not submit final court dispositions on appeal.

The applicant is responsible for providing all evidence revealing the final court dispositions of his arrests detailed above. The applicant has failed to provide the final court dispositions of his July 1993, August 2001, and October 2001 arrests. It is noted that the FBI fingerprint results report indicates that the applicant has been convicted of at least one felony and one misdemeanor offense. In accordance with 8 C.F.R. § 244.1, the felony conviction alone bars the applicant from being eligible for TPS. Therefore, the argument made by counsel on appeal concerning a crime of moral turpitude and the applicant's eligibility for a 212(a) waiver, is irrelevant. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application under 8 C.F.R. § 244.9(a), and because of his felony conviction under 8 C.F.R. § 244.1 and 8 C.F.R. § 244.3(c).

The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial. 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.