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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 30 2007
[EAC 01 163 50173]

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:

[REDACTED]

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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. He was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director subsequently withdrew the applicant's status on March 6, 2006, because he had failed to submit the court disposition for his arrest on January 29, 2002, for possession of a dangerous weapon.

On appeal, the applicant submits a court disposition document for an arrest on January 28, 2002, for appearing in public in an intoxicated condition and states:

I have obtained the documents you have requested and I have enclosed them with this appeal. Please note that I was arrested on July 28, 2002 for disorderly conduct and/or public intoxication but the court could not provide and did not find anything for the 29 of January and the charges of possession of dangerous weapon.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for repatriation; 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) It appears from the National Law Enforcement Teletype System printout that on January 29, 2002, the applicant was arrested for aggravated malicious wounding and subsequently, on March 4, 2002, he was found guilty of assault and battery by a Judge of the Shenandoah County Combined Courts in Virginia, a misdemeanor. Case Number: [REDACTED]

However, despite the director's request, the applicant failed to provide the actual court disposition for this offense.

(2) On March 4, 2002, the applicant was found guilty of profane swearing and intoxication in public by a Judge of the Shenandoah County Combined Courts in Virginia, a Class 4 misdemeanor. Case Number [REDACTED]

(3) On May 14, 2002, the applicant was found guilty of driving while intoxicated by a Judge of the Shenandoah County Combined Courts in Virginia, a misdemeanor. Case Number: [REDACTED]

Pursuant to a letter dated October 20, 2005, the applicant was requested to submit the final court disposition for his arrest on January 29, 2002 for aggravated malicious wounding listed as Item #1 above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied it on March 6, 2006.

On appeal, the applicant merely states "the court could not provide and did not find anything for the 29 of January and the charges of possession of dangerous weapon."

The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above at Item #1. Therefore, he is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2 (b) and (c). Additionally, he has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore, the application cannot be approved for these additional reasons.

The application will be denied for the above stated 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.