

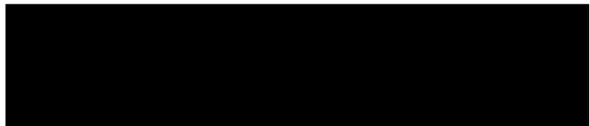


U.S. Citizenship
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Services

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FILE:



OFFICE: Vermont Service Center

DATE:

AUG 01 2007

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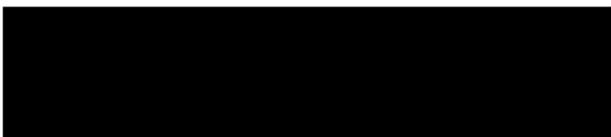
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The approval of the application was withdrawn and the re-registration application denied by the Director, Vermont Service Center.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 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 withdrew the application because he found that the applicant had failed to successfully re-register for TPS.

On appeal, counsel for the applicant states that the applicant should have been given an opportunity to respond, but submits no additional documentation in support of the applicant's eligibility.

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.
8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On February 6, 2005, the applicant was arrested for Driving While Intoxicated, 2nd offense within 5 – 10 years, by the Prince William County Police Department, Manassas Virginia. The applicant was not charged with this offense.
- (2) On February 6, 2005, the applicant was arrested for Eluding Police, Endangering Persons or Police Car, by the Prince William County Police Department, Manassas Virginia.
- (3) On February 6, 2005, the applicant was arrested for Resisting Arrest, by the Prince William County Police Department, Manassas, Virginia.
- (4) On February 6, 2005, the applicant was arrested for Identity Fraud, by the Prince William County Police Department, Manassas, Virginia.
- (5) On March 5, 2005, the applicant was arrested for Driving While Intoxicated, by the Prince William County Police Department, Manassas, Virginia.
- (6) On June 21, 2005, the applicant was arrested for being a Fugitive From Justice by the Manassas, Virginia Police Department.

Pursuant to a letter dated April 19, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant provided court documents relating to the charges at Nos. 1 and 6 above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 13, 2006.

On appeal, counsel asserts the applicant was not given an opportunity to respond, but does not submit any evidence in support of the applicant's eligibility.

Counsel asserts that the applicant should have been given an opportunity to respond. The AAO would note that the applicant was issued a Notice of Intent to Withdraw and given time to respond. In addition, the Form I-821, Application for Temporary Protected Status, clearly states that the applicant must provide the final disposition for any criminal charges. The applicant failed to reveal his criminal record or provide final dispositions for all charges on his criminal record. The director clearly listed 5 of the 6 charges detailed in the Notice of Intent to Withdraw and gave the applicant adequate time to respond. The applicant provided court documents relating to only two of the arrests listed. Thus, counsel's argument is without merit.

The applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed at Nos. 2 – 5 above. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the withdrawal of his TPS will be affirmed under 8 C.F.R. § 244.14(a)(1).

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.