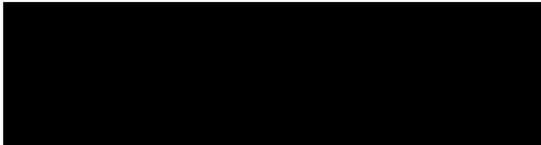


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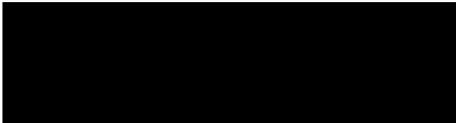
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FILE: [REDACTED] OFFICE: California Service Center DATE: **AUG 02 2007**
[WAC 05 231 71569]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 denied the application because he found that the applicant had (1) failed to submit requested court documentation relating to his criminal record; (2) failed to establish his national identity; and (3) failed to establish he was eligible for late registration.

On appeal, counsel for the applicant asserts that the applicant is attempting to comply with a California court order, and that the applicant is prima facie eligible for TPS.

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 first issue in this matter is the applicant's national identity. The record clearly establishes that the applicant is a national of El Salvador and the director's decision on this issue will be withdrawn.

The second issue in this matter is the applicant's eligibility to file an application for late initial registration. The record indicates that the applicant has an asylum case pending, and thus satisfies the criteria established at 8 C.F.R. § 244.2(f)(2) for filing a late initial registration. The director's decision on this issue is withdrawn.

The third issue in this matter is the applicant's ineligibility due to his failure to provide the information necessary to adjudicate his petition.

The record reveals the following offenses:

- (1) On February 27, 1995, the applicant was arrested or received by the Los Angeles Police Department for Trespassing to Occupy Without Consent.
- (2) On April 4, 1995, the applicant was arrested or received by the Los Angeles Police Department for Hit and Run Resulting in Property Damage.
- (3) On July 18, 1997, the applicant was arrested or received by the Los Angeles Police Department for ADW on Person With Firearm.

The AAO would note that there is evidence of many other charges on the applicant's criminal record which have not been revealed by the applicant, and which did not appear on FBI fingerprint report. Among these

other unlisted charges, referenced by the applicant's attorneys, are several convictions for Driving While Under the Influence and Domestic Violence.

Pursuant to a letter dated February 7, 2006, the applicant was requested to submit the final court disposition for any charges on his criminal record. The record does not indicate that the applicant responded.

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 6, 2006.

On appeal, counsel for the applicant asserts the applicant is eligible for TPS.

In a letter dated May 9, 2006, counsel asked for more time to produce evidence because the applicant lived in New York and the records being requested were in California. Then, on the I-290B, Notice of Appeal, counsel states that a final disposition cannot be produced because the applicant is attempting to comply with a California court order. It appears from the document submitted that the applicant left the state of California before this and other criminal charges were resolved, violating his probation, and was required to appear once the state was contacted for copies of the dispositions of the applicant's charges. It is misleading to portray the applicant as an innocent victim of a procrastinating bureaucracy when it appears he has failed to comply with court ordered programs arising from charges on his criminal record. There is no evidence that the applicant has attempted to obtain final dispositions for all of the charges noted by the director, or any which may otherwise be on the applicant's record but not revealed by the applicant or his counsel (such as the Driving While Intoxicated or Domestic Battery charges referenced by one of the applicant's attorneys).

The applicant has failed to provide the final court disposition of any and all arrests on his criminal record. It is noted that the applicant failed to reveal his criminal arrests on his application for TPS and counsel failed to utilize due diligence in certifying this alien's application as accurate and true. 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 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.