

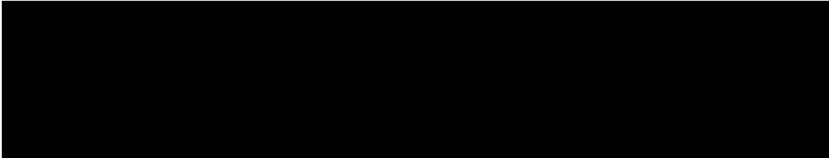


U.S. Citizenship
and Immigration
Services

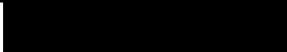
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FILE:



Office: California Service Center

Date:

AUG 06 2007

[WAC 01 145 50681]

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:

Self-represented

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. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be reopened and the appeal will again 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 due to abandonment because the applicant had failed to provide the final disposition for criminal charges listed on his record.

A subsequent appeal from the director's decision was dismissed on July 15, 2005, after the Director of the AAO concluded that the applicant had been convicted of two or more misdemeanors in the United States. On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits the minutes of two court proceedings.

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 April 7, 2003, the applicant was convicted of Driving With a Blood Alcohol Content of .08 percent, in the Superior Court of California, Case No. [REDACTED]. This is a misdemeanor conviction.
- (2) On January 14, 2004, the applicant was convicted of Driving With a Blood Alcohol Content of .08 percent, in the Superior Court of California, Case No. [REDACTED]. This is a misdemeanor conviction.
- (3) On January 16, 2004, the applicant was arrested by the Norwalk California Police Department for driving with a blood alcohol content of .08%. The applicant has failed to submit a final court disposition for this arrest.

On appeal, the applicant asserts that his convictions are traffic related, and that he was never arrested in Norwalk, California.

The record clearly establishes that the applicant has been convicted of two or more misdemeanors. Each conviction was punishable by a year or less in prison, regardless of the amount of time the applicant actually served, and are thus misdemeanors for the purpose of determining TPS eligibility.

In addition, FBI records show the applicant was arrested on January 16, 2004. It is insufficient for counsel to simply assert "the applicant was never arrested." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the Chief's decision on the issue of failing to provide a final disposition for this arrest will be affirmed. If this arrest is incorrect the applicant must submit a certified statement from the Norwalk Police Department verifying the applicant was never arrested in Norwalk, California.

The applicant is ineligible for TPS due to his conviction of two or more misdemeanors in the United States detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the Chief's decision of July 15, 2005, 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.