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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[LIN 02 080 52431]

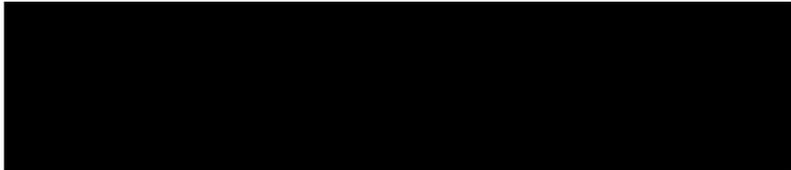
OFFICE: Detroit, Michigan

DATE:

AUG 22 2007

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 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 District Director, Detroit, Michigan. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application on January 2, 2002, during the initial registration period under receipt number LIN 02 080 52431. The district director first denied the application on December 18, 2003, because the applicant was not eligible for TPS under section 244(c)(2)(B)(i) due to his conviction of any felony or two misdemeanors committed in the United States. However, the Notice of Decision failed to advise the applicant of his appeal rights. The applicant was then notified on October 13, 2004, that he had thirty days to appeal the decision. The applicant filed his appeal on November 26, 2004.¹

On appeal, counsel asserts that the applicant has made real efforts at rehabilitation since his last arrest in December 2000.

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;

¹ On January 4, 2006, the district director issued another Notice of Decision denying the same application.

(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 July 15, 1999, applicant was convicted in Wyoming, Michigan of using marijuana, a misdemeanor.
- (2) On September 1, 1999, applicant was convicted in Wyoming, Michigan of driving while license was suspended, a misdemeanor.
- (3) On November 3, 2000, applicant was convicted in Grand Rapids, Michigan of driving while unlicensed, a misdemeanor.
- (4) On January 2, 2001, applicant was convicted in Wyoming, Michigan of possession of marijuana, a misdemeanor.
- (5) On January 2, 2002, applicant was convicted in Wyoming, Michigan of purchasing, consuming and possession of alcohol while a minor, a misdemeanor.

On appeal, counsel asserts that the applicant has made real efforts at rehabilitation since his last arrest in December 2000.

Counsel failed to submit any evidence that the applicant has not been convicted of any felony or two misdemeanors committed in the United States and therefore, has not overcome the grounds of the district director's decision to deny TP to the applicant.

The applicant is ineligible for TPS due to his having been convicted of a felony or two or more misdemeanors committed in the United States, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the district director's decision to deny the application for this reason will be affirmed.

The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions detailed in nos. 1 and 4 above.

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.