



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 18 2007

[EAC 02 057 51450]

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 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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 director determined that the applicant had failed to respond to the request for evidence concerning the final court disposition of his DWI arrest, and subsequently denied the application on February 4, 2004.

On appeal, counsel for the applicant submits a copy of the final court disposition that shows that the applicant was convicted of one count of DWI on January 17, 1992 before the Ramapo Justice Court in New York State.

The statute indicates that an alien shall not be eligible for temporary protected status under Section 244(c) of the Act 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 demonstrates that the applicant was convicted of one misdemeanor; therefore, the applicant has overcome the sole ground for denial as stated by the director, and the director's decision will be withdrawn. However, a review of the record of proceedings reveals that the applicant has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States. Therefore, the case will be remanded to the director for further consideration and action. The director may request any additional evidence deemed necessary to assist her with the determination.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8



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U.S.C. § 1361.

ORDER: The director's decision of February 4, 2004 is withdrawn. The matter is remanded to the director for entry of a new decision.