



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 26 2007
[EAC 01 169 51908]

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: 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.


for 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 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 director denied the application because the applicant had failed to submit all of the requested final court dispositions of his arrests.

On appeal, the applicant states that he needs an additional 30 days in which to submit a brief and/or evidence because he has to obtain the supporting documents from California. To date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The records of the National Crime Information Center (NCIC) and the Department of Homeland Security (DHS) database, contained in the record of proceeding, reflect the following regarding the applicant:

1. On January 1, 2003, in Montgomery County, Maryland, the applicant was arrested for Count 1, possession of a controlled dangerous substance; and Count 2, possession of a controlled dangerous substance paraphernalia. On January 9, 2003, a “failure to appear” was issued against the applicant.
2. On April 21, 2003, in Redwood City, California, the applicant was arrested for Count 1, driving under the influence of alcohol/drugs; and Count 2, driving without a license.

In Notice of Intent to Deny (NOID) dated July 15, 2004, the applicant was requested to submit certified final court dispositions of every charge against him, including the court dispositions of his arrests listed in Nos. 1 and 2 above. In response, the applicant submitted a notice from the District Court of Maryland for Montgomery County dated March 29, 2004. The director determined that the applicant failed to submit the final court dispositions of all of his arrests and denied the application on October 7, 2004.

It is noted that subsequent to the director’s NOID and the director’s denial decision, the Federal Bureau of Investigation (FBI) fingerprint results report dated May 25, 2005, was received at the Service Center. The FBI report reflects the following additional arrest:

3. On December 13, 2004, in Redwood City, California, the applicant was arrested for driving under the influence of alcohol/drugs. The FBI report indicates that the applicant was convicted of this offense; however, the actual final court disposition is not contained in the record.

On appeal, the applicant states that he needs to obtain the supporting documents from California. However, to date, no additional statement or evidence has been provided.

The notice from the District Court of Maryland for Montgomery County, dated March 29, 2004, furnished by the applicant in response to the director's notice of intent to deny, indicates that on March 29, 2004, the State's Attorney entered a *nolle prosequi* on Case Number [REDACTED], in regards to [REDACTED]. There is no indication, however, that this case relates to No. 1 above, as no other information was included on the document, such as the date of arrest and the type of offense(s) committed. Additionally, this document was not certified by the court.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 1, 2, and 3 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 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.