



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

MI

FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

MAR 29 2007

[EAC 04 052 50799]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

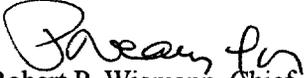
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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 application was denied by the director on April 20, 2006, on the ground that the applicant failed to provide the final court disposition for her arrest(s), making her ineligible for TPS under 8 C.F.R. § 244.9(a) and (b).

On appeal, counsel contends that the director erred because the applicant submitted the requested evidence.

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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS who are El Salvadoran nationals must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed her initial Form I-821, Application for Temporary Protected Status, on September 17, 2003.

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 burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. See 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. See 8 C.F.R. § 244.9(b).

On October 27, 2005, the director issued a notice of intent to deny (NOID) advising the applicant that a criminal history check based on the applicant's fingerprints revealed that the applicant was arrested on January 28, 2005, in the State of Washington by the Bellevue Police Department and the Seattle Police Department on two charges of malicious mischief. The applicant was advised to submit documentary evidence of the final court disposition

of the charges. In response the applicant submitted a web search transcript confirming that she was arrested by the Bellevue Police Department and the King County Sheriff's Office on charges of domestic violence, categorized as a class C felony; a photocopied document from the King County District Court, State of Washington, dated January 29, 2005, indicating that there was probable cause in the applicant's arrest for malicious mischief on January 28, 2005, ordering her release from jail pending the filing of formal charges, and scheduling a hearing for February 1, 2005; and a second photocopied document from the court, dated February 1, 2005, unconditionally releasing the applicant from jail but reserving the right to file charges at a later date.

On February 6, 2006, the director issued a second NOID, noting that one of the charges against the applicant had been unconditionally discharged but that a court hearing on the other had been scheduled for February 1, 2005. The applicant was requested to provide the court's decision on this offense. The applicant responded by submitting a photocopied letter on King County District Court letterhead, and two letters from the City of Bellevue concerning criminal proceedings involving the applicant's husband.

On April 20, 2006, the director denied the application on the ground that the documentation submitted by the applicant in response to the NOID of February 6, 2006, failed to include the court disposition(s) of her arrest(s).

On appeal counsel asserts that the decision is in error because the applicant provided the evidence requested by the director. Counsel requests that the application be reviewed, and submits copies of previously submitted documents.

The evidence of record does not include a final court disposition of the applicant's charge of malicious mischief, as requested by the director. The order issued by the King County District Court on February 1, 2005, four days after the applicant's arrest, unconditionally released the applicant from jail, but indicated that this action was "pending filing of charges" and stated that "though charges have not been filed on this investigation the state may file charges at a later date." The court order of February 1, 2005, does not constitute a final court disposition of the applicant's arrest. The letter submitted in response to the second NOID, on letterhead of the King County District Court, State of Washington, East Division, states that "the court cannot find any criminal convictions under the specific name provided by the clerk." The letter does not identify the applicant as the person for whom the search was conducted, and does not address the specific charge at issue in this immigration proceeding, arising from the applicant's arrest on January 28, 2005. The letter is not signed by any official of the court, and bears no authenticating stamp. The letter has little evidentiary weight, therefore, and does not constitute a final court disposition of the applicant's arrest.

The AAO concurs with the director that the applicant has failed to establish her eligibility for TPS in accordance with section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The director's decision denying the application will therefore be affirmed.

Beyond the decision of the director, the evidence does not establish that the TPS application was timely filed. Since the initial registration period for TPS applicants from El Salvador expired on September 9, 2002, and the applicant's initial Form I-821 was not filed until a year later, on September 17, 2003, the applicant must provide evidence that she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) and filed her TPS application within 60 days of the end of the qualifying condition, as prescribed in 8 C.F.R. § 244.2(g) to

qualify for late registration. The record shows that the applicant was named as a beneficiary on an asylum application (Form I-589) filed by her father in 1999, which is a qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Citizenship and Immigration Services (CIS) records indicate that this asylum application was administratively closed on July 14, 2003, thereby terminating the qualifying condition. To meet the 60-day deadline for late TPS filing prescribed in 8 C.F.R. § 244.2(f)(g), the applicant had to file her Form I-821 application no later than September 12, 2003. The applicant did not meet this deadline, since her initial Form I-821 application was not filed until September 17, 2003. Thus, the applicant's initial TPS application does not meet the requirements for late registration, and must be denied on this ground as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The director's decision to deny the application for TPS 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 that burden.

ORDER: The appeal is dismissed.