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U.S. Citizenship
and Immigration
Services

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FILE:

[SRC 02 175 53260]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 16 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:

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application 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 she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a statement and additional 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.

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.
8 C.F.R. § 244.1.

The record reveals the following offenses:

1. The applicant was arrested on July 4, 2000, in Fairfax County, Virginia, and charged with assault and battery - family member in violation of section 18.2-57.2 of the Code of Virginia, a Class 1 misdemeanor.
2. On November 12, 2000, the applicant was arrested in Alexandria, Virginia, and charged with petit larceny in violation of section 18.2-96 of the Code of Virginia, a Class 1 misdemeanor.
3. On January 10, 2001, the applicant was arrested in Arlington, Virginia, and charged with felonious assault in violation of section 18.2-51 of the Code of Virginia, a Class 3 felony.

Pursuant to a letter dated August 7, 2002, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted a Warrant of Arrest and court disposition document relating to the arrest detailed in No. 2 above. According to this document, prosecution was declined on the charge of petit larceny in the Fairfax County General District Court, Fairfax County, Virginia on August 23, 2001. (Case No. [REDACTED]).

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 12, 2004.

On appeal, the applicant states that his former attorney failed to obtain the final court disposition documents in the Notice of Intent to Deny dated August 7, 2002. The applicant submits the following:

4. a Warrant of Arrest and court disposition document relating to the arrest detailed in No. 1 above, indicating that the applicant pled guilty to assault & battery - family member in the Fairfax County General District Court, Fairfax County, Virginia, on August 23, 2000. (Case No. [REDACTED])
5. a Warrant of Arrest and court disposition document relating to the arrest detailed in No. 3 above, indicating that the applicant was convicted of the amended charge of assault & battery in violation of section 18.2-57 of the Code of Virginia, a Class 1 misdemeanor (Case No. [REDACTED])
6. a copy of the Warrant of Arrest document previously submitted in response to the Notice of Intent to Deny dated August 7, 2002.

On appeal, the applicant has provided final court disposition documents establishing that he has been convicted of two misdemeanors. The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in Nos. 1 and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(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.