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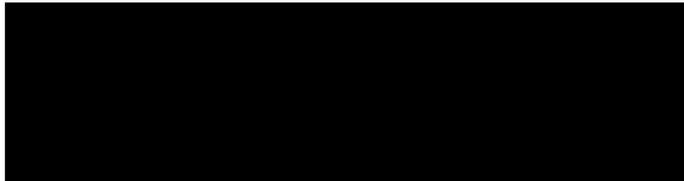
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



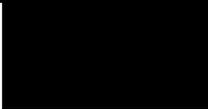
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 18 2007**

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IN RE:

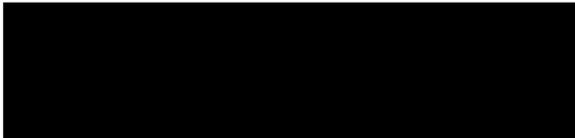
Applicant:



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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was initially approved and subsequently withdrawn by the Director, Vermont Service Center (VSC), and the case is now before the Administrative Appeals Office (AAO) on appeal.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 was granted TPS on January 4, 2002. The director subsequently withdrew the applicant's TPS on January 30, 2006, because he failed to respond to a request for the final court dispositions related to two arrests.

On appeal, the applicant states in a sworn statement that he never received the request to provide the court dispositions. The applicant's counsel also submits a certification of a true transcript of a record on file in the District Court of the County of Suffolk. Counsel also asserts that the applicant is not ineligible for TPS because he has not been convicted of any felony or two or more misdemeanors.

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.

On July 19, 2005, and again on October 27, 2005, the director requested the applicant, through his counsel, to submit certified judgment and conviction documents for the following arrests:

- (1) December 31, 1999, by the Suffolk County Police Department for driving while intoxicated.
- (2) June 3, 2001, by the Suffolk County Police Department for driving while intoxicated.

On appeal, the applicant states in a sworn statement that he never received the request to provide the court dispositions. The applicant's counsel also submits a certification of a true transcript of a record on file in the District Court of the County of Suffolk. Counsel also asserts that the applicant is not ineligible for TPS because he has not been convicted of any felony or two or more misdemeanors.

The record reveals that the request for the final court dispositions was mailed on October 27, 2005, to the applicant's attorney of record, who was his designated representative as evidenced by a Form G-28, Notice of Appearance as Attorney or Representative, that the applicant signed on January 8, 2005. Further, although counsel submitted a certification of a true transcript of a record on file in the District Court of the County of

Suffolk, this document does not satisfy the requested certified judgment and conviction documents because it is merely a summary document. In addition, although the applicant and counsel state that no final disposition was found by the Court of Suffolk County, for the 1999 arrest and/or conviction, the Federal Bureau of Investigations (FBI) fingerprint results report indicates that the applicant was arrested and convicted under the name [REDACTED]. Therefore, the applicant has not provided any evidence that he has not been convicted of any felony or two or more misdemeanors committed in the United States. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status will be affirmed.

Beyond the decisions of the director, the record reveals that the applicant was also arrested on the following occasions:

- (1) June 6, 2006, by the Suffolk County Police Department, and charged with "Sexual Abuse...", and "Criminal Contempt" for violating a protection order, both felonies. He was also charged with "Menacing with a Weapon," and "Acting in a Manner Injuring a Child less than 17," both misdemeanors; and,
- (2) March 31, 2006, by the Suffolk County Police Department, and charged with assault and menacing, both misdemeanors.

The record also reveals that on October 13, 2006, the applicant pled guilty to Criminal Contempt – 1st Degree, Violating an Order of Protection (Weapon and Threats), a class "E" felony.

The applicant is therefore, ineligible for TPS due to his record of at least one felony and several misdemeanor convictions, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.