



U.S. Citizenship
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Services

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FILE:

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OFFICE: VERMONT SERVICE CENTER

DATE:

IN RE:

Applicant:

APPLICATION:

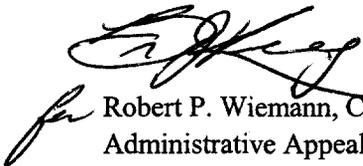
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The decision of the director will be withdrawn, and the application will be approved.

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 requested court documentation relating to his criminal record.

On appeal, the applicant submits a brief statement and additional documentation.

Although the appeal includes a letter from counsel indicating representation of the applicant, no Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted authorizing counsel to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.

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 record reveals the following offenses:

- (1) On June 13, 2000, the applicant was arrested by the State Police, Sudbury, Massachusetts, and charged with (1) False RMV Document; (2) Unlicensed Operator; and (3) False Name to Arresting Officer.
- (2) On March 8, 2003, the applicant was arrested by the Police Department, Ottumwa, Iowa, and charged with Domestic Abuse/Assault – Simple.

On December 14, 2001, May 29, 2002, and July 3, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted documentation regarding the court disposition of No. 2, above, indicating that he pled guilty to an amended charge of Simple Assault, for which he received a fine and was sentenced to 10 days in jail.

The director determined that the documentation submitted only addressed one of the two arrests. The director concluded that the applicant had failed to submit all of the evidence necessary for the proper adjudication of the application and denied the application on August 20, 2003.

On appeal, the applicant submits additional documentation indicating that the charges detailed in No. 1, above were dismissed. He did, however, plead guilty to having an Expired Inspection Sticker, for which he paid fines.

Based on the evidence provided, the applicant has been convicted of one misdemeanor offense and one non-misdemeanor traffic violation. Therefore, he is not ineligible for Temporary Protected Status under Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

It is concluded that the applicant has overcome the director's sole reason for denial of the application. Therefore, the decision of the director will be withdrawn, the appeal sustained, and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained. The decision of the director, dated August 20, 2003, is withdrawn. The application is approved.