



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 273 51055]

Office: VERMONT SERVICE CENTER

Date:

FEB 25 2008

IN RE:

Applicant: [REDACTED]

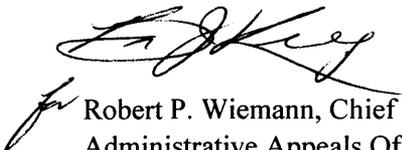
APPLICATION:

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 Vermont Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC) withdrew approval of the applicant's Temporary Protected Status (TPS). The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the decision of the director will be withdrawn.

The applicant is a native and citizen of El Salvador who was granted TPS on July 16, 2003.

The VSC director withdrew the applicant's TPS on January 22, 2007, after determining that the applicant had been convicted of a crime involving moral turpitude (CIMT) and was, therefore both ineligible for TPS and inadmissible to the United States.

On appeal, counsel for the applicant submits a brief.

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 TPS 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 to the United States if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals that the applicant was arrested on March 29, 2003, in Fairfax, Virginia, and charged with Felonious Assault, in violation of Virginia Code §18.2-51. That charge was subsequently reduced to Assault, in violation of Virginia Code §18.2-57, a Class 1 misdemeanor, for which the applicant was convicted on August 18, 2003, in the Fairfax County General District Court. Under Virginia Code §18.2-11(a), a Class 1 misdemeanor is punishable by confinement in jail for not more than 12 months, and a fine of not more than \$2,500, either or both. The applicant was sentenced to 360 days in jail, with 345 days suspended, assessed court costs of \$65, and ordered to have no contact with the victim and to stay away from Ruth Chris Steak House.

Based on the evidence contained in the record, the applicant has been convicted of one misdemeanor offense. 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). Furthermore, simple assault is not a crime involving moral turpitude. Therefore, the applicant is not inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Act.

It is concluded that the applicant has overcome the director's sole reason for withdrawal of the applicant's TPS. There are no known grounds of ineligibility. Therefore, the appeal will be sustained, and the director's decision will be withdrawn.

An alien applying for TPS 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 director's decision, dated January 22, 2007, is withdrawn.