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U.S. Department of Homeland Security
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Washington, DC 20529

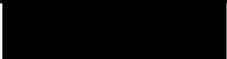


**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 23 2008

[LIN 01 17950329]
[WAC 05 147 75429]

INRE:

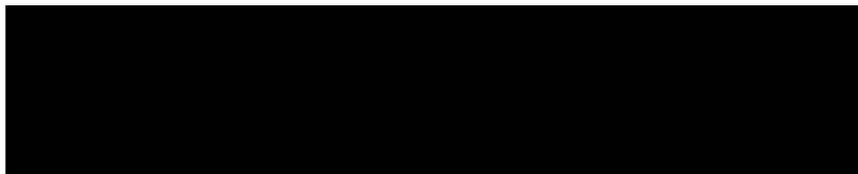
Applicant:



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

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, approved the initial application. The Director, California Service Center (CSC), subsequently withdrew the approval of the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

The director, CSC, withdrew the approval of the application for failure to provide requested documents, i.e., the final court disposition of a charge brought against the applicant in Iowa in 1997.

On appeal, counsel for the applicant submits the requested disposition and asserts that, since the applicant was only convicted of one misdemeanor, the applicant is eligible for TPS.

On appeal, the applicant submits a letter from his probation officer and asserts that he successfully completed probation and just wants a chance to be a productive and positive member of society. He further asserts that he is extremely remorseful for what he did and that he committed these crimes in his youth when he was being influenced by the wrong crowd.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 c.P.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations in 8 c.P.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.P.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 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.

The record reflects that the applicant filed a TPS application on May 7, 2001 (LIN 01 179 50329) - during the initial registration period for Salvadorans. The director, NSC, approved the application on July 5, 2002.

On January 31, 2005, the applicant submitted the current re-registration application (WAC 05 14775429).

On September 21, 2006, the director, CSC, requested that the applicant submit the final court dispositions of two arrests: one on June 16, 1997, and one on March 24, 2003.

The applicant submitted the following final court disposition for the March 24, 2003, arrest:

1. On May 29, 2003, in Iowa District Court, in Dallas County, Iowa, the applicant pleaded guilty to one count of Domestic Abuse Assault.

Under Iowa law, a conviction for Domestic Abuse Assault is classified as a simple misdemeanor. Generally, the penalty for a simple misdemeanor in Iowa is a maximum jail term not to exceed 30 days. This conviction is therefore considered a misdemeanor for determining TPS eligibility.

The applicant did not submit the final disposition for the June 16, 1997, arrest.

On November 11, 2006, the director denied the re-registration application for failure to submit the final court disposition of the June 16, 1997, arrest, and withdrew the approval of the applicant's initial TPS application.

On appeal, counsel for the applicant submits the final disposition for the June 16, 1997, arrest. Counsel states that the disposition, because it was from so long ago, had been difficult to obtain and was not previously available. The disposition reflects that the applicant was charged with assault, but that the charge was dismissed on July 31, 1997.

The applicant, therefore, only stands convicted of one misdemeanor and is not ineligible for TPS. Accordingly, the director's decision to deny the application on this ground is withdrawn and the application is approved.

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. The applicant has met that burden.

ORDER: The appeal is sustained and the application is approved.