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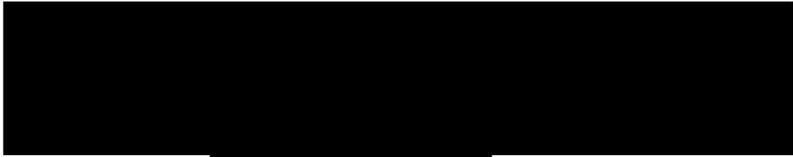
U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 29 2008

[EAC 06 362 72562]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador and seeks 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 been convicted of two or more misdemeanors in the United States.

On appeal, the applicant asserts that she has not committed an aggravated felony and explains the circumstances of her arrests. She submits final court dispositions and other documentation.

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 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 an initial TPS application on August 31, 2006 – almost four years after the close of the initial registration period for Salvadorans.

On January 8, 2008, the director requested that the applicant submit evidence of her eligibility for late registration and that she submit the final court dispositions of all charges against her. In response to the director’s request, the applicant submitted the dispositions for six arrests. On four occasions, the charges were dropped against the applicant. However, the applicant was convicted of the following:

1. On February 2, 2000, for a November 23, 1999, arrest, in the Superior Court of California, County of Fresno, (case no. [REDACTED]) of Driving Under the Influence (DUI) of Alcohol, in violation of California Vehicle Code § 23152(B); and,
2. On February 21, 2002, for a December 7, 2001, arrest, in the Superior Court of California, County of Fresno, (case no. [REDACTED]) of Public Intoxication, in violation of California Penal Code § 647(f).

Under California law, a conviction for DUI is classified as a misdemeanor and can result in up to six months imprisonment. A conviction for Public Intoxication is also classified as a misdemeanor, and can result in up to six months imprisonment.

On appeal, the applicant explains the circumstances of her arrests and that her lawyer did not explain the consequences of her pleas to her. However, she still stands convicted of two misdemeanors and is therefore ineligible for TPS.

The applicant is ineligible for TPS due to her record of two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to deny the application on this ground will be affirmed.

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 failed to meet that burden.

ORDER: The appeal is dismissed.