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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M<sub>1</sub>

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JAN 30 2008

[EAC 01 157 53673]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

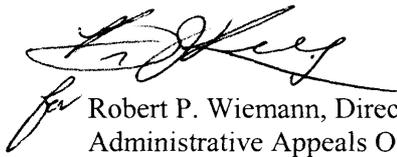
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained 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 January 2000 criminal arrests.

On appeal, counsel submits a statement and additional evidence.

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.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on January 3, 2001, in Hyattsville, Maryland, the applicant was arrested for assault in the second degree. The records of the District Court of Maryland for Prince George’s County (Case No. [REDACTED]) indicate that the applicant was subsequently charged with Count 1, assault in the second degree; and Count 2, assault in the second degree. On October 24, 2001, the court entered a “nolle prosequi” on the case.
- (2) On February 7, 2000, in the Fairfax County General District Court, Virginia, Case No. [REDACTED] (arrest date January 10, 2000) the applicant was convicted of driving with .08 percent blood alcohol level or more, Virginia Code § 18.2-266, a class 1 misdemeanor. He was ordered to pay \$710 in fines and costs, placed on probation for a period of 12 months, and his driver’s license was suspended for a period of 12 months.
- (3) On January 10, 2000, the applicant was arrested for driving while intoxicated, under the influence of alcohol or drugs or drugs and alcohol or controlled dangerous substance (Case No. [REDACTED]). On October 24, 2001, in the District Court of Maryland, a “nolle prosequi” was entered on the case.
- (4) On January 10, 2000, the applicant was arrested for driving an uninsured vehicle (Case No. [REDACTED]). On October 24, 2001, in the District Court of Maryland, a “nolle prosequi” was entered on the case.
- (5) The FBI report shows that on January 15, 2000, in Fairfax, Virginia, the applicant was arrested for fugitive from justice.
- (6) The FBI report shows that on January 19, 2000, in Marlboro, Maryland, the applicant was arrested for assault in the first degree.

The director determined that although the applicant was requested on January 17, 2002, on February 12, 2004, and on April 1, 2004, to submit the final court dispositions of the applicant’s arrests listed as Nos. 5 and 6,

above, he had failed to adequately respond to these requests. Therefore, the director denied the application on August 5, 2004.

On appeal, counsel submits court documents relating to Nos. 5 and 6 above. The records of the District Court of Maryland for Prince George's County (Case No. [REDACTED]) indicate that a warrant for the applicant's arrest was issued on January 11, 2000, for charges committed by the applicant on January 10, 2000, for Count 1, assault in the first degree; Count 2, assault in the second degree; and Count 3, malicious destruction of property valued over \$300. A warrant of arrest for extradition was issued in the Fairfax County General District Court, Virginia, and on January 15, 2000, the applicant was arrested and subsequently delivered to Prince George County on January 19, 2000. On February 17, 2000, the District Court of Maryland dismissed Count 1; on June 16, 2000, the District Court of Maryland dismissed Counts 2 and 3.

The record, in this case, shows that the applicant was convicted of only one misdemeanor offense, detailed in No. 2 above. Therefore, the applicant is not ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. Accordingly, the director's decision to deny the application will be withdrawn.

The applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). The director's decision will be withdrawn, 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. The applicant has met this burden.

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