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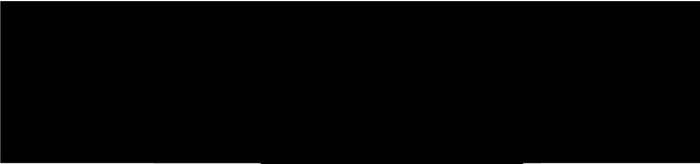
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 07 2008

[EAC 08 048 50880, appeal]  
[WAC 02 136 52400]

INRE:

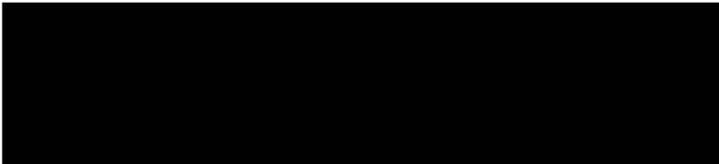
Applicant:



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

Robert P. Wiemann, Chief  
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 dismissed.

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 the final court disposition for his August 12, 2002 arrest for burglary and burglary tools possession.

On appeal, counsel acknowledges that the applicant has been convicted of driving under the influence, a misdemeanor. Counsel states that on March 16, 2002, the applicant, under the name [REDACTED] was arrested by the Tempe Arizona Police Department. Counsel further states that all charges were ultimately dismissed. Counsel argues that as the applicant has been convicted of only a single misdemeanor, he remains eligible for the TPS program. Counsel submits additional documentation for consideration.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R § 244.4(a).

The regulations at 8 C.F.R § 244.1 define "**felony**" and "misdemeanor" as:

*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 the following offenses:

- (1) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on March **16, 2002**, he was arrested by the Police Department in **Tempe, Arizona**, and charged with burglary in the third degree and burglary tools **possession**, both felonies.
- (2) On September 3, 2002, the applicant was convicted by a Judge of the Superior Court of the County of Los Angeles, State of California, of driving while having a 0.08 or higher blood alcohol **level**, a violation of Vehicle Code Section (**VCS**), 23152(b), a misdemeanor. (Case No. **██████████**)

On appeal, counsel states that on March 16, 2002, the applicant, under the name [REDACTED] was arrested by the Tempe Arizona Police Department. Counsel argues that all charges were ultimately dismissed. Counsel submits a letter from the Arizona Department of Public Safety dated February 7, 2007, indicating that the Department does not have the authority to disseminate state criminal history record information or a state criminal clearance letter to a person for the purpose of providing it to another entity for immigration. Counsel also submits a copy of an uncertified document from Kyrene Justice Court and a copy of an uncertified printout from the East Tempe Justice Court and indicates that these should be considered court dispositions in the applicant's case. **Neither** document is certified by a member of either court nor do either of the documents provide disposition information concerning the two charges listed in Item # 1 **above**.

The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R § 244.9(a). Consequently, the VSC Director's decision is affirmed for this reason.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated March 10, 2005, indicating that the **United** States Border Patrol apprehended the applicant after he illegally entered the United States by crossing the border on March 7, 2005. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R §§ 244.2(b) and (c) which require his continuous residence in the United States since February 13, 2001 and his continuous physical presence in this country since March 9, 2001. Consequently, the director's decision to deny the application for TPS is affirmed for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 failed to meet this burden.

ORDER: The appeal is dismissed.