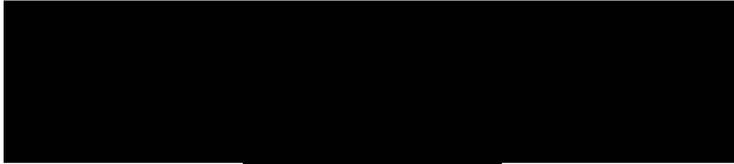


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Services

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FILE:



[SRC 03 031 56115]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 25 2008**

INRE:

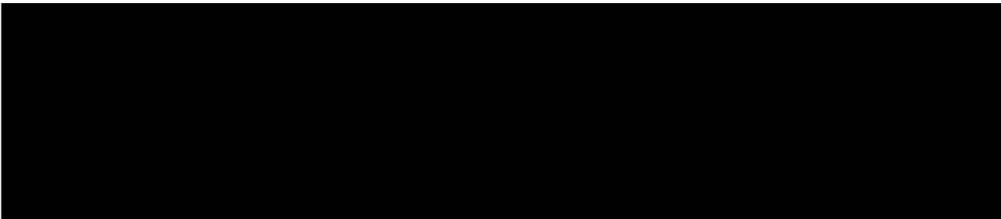
Applicant:



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DISCUSSION: The Approval of the applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and the case is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

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 record shows that the applicant filed his initial TPS application on October 30, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 03 031 56115. That application was approved on April 18, 2003.

The director withdrew the applicant's Temporary Protected Status on March 3, 2006, when it was determined that the applicant had been convicted of two misdemeanor offenses committed in the United States.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; 63 FR 63593)

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;(emphasis added)

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.
8 C.F.R. § 244.1.

The record of proceedings contains a Federal Bureau of Investigation fingerprint results report revealing that the applicant was arrested by the Metro-Dade Police Department for the following: "Driving Under the Influence" on June 6, 2002; and "BW Driving Under the Influence" on July 10, 2002.

On February 13, 2003, the director requested the applicant to submit a copy of his birth certificate or nationality document. In addition, the applicant was requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States. Also, the applicant was requested to submit the final court dispositions regarding his past arrests, as noted above.

The director found the applicant ineligible for TPS because he was convicted of two misdemeanor offenses committed in the United States. Therefore, the director withdrew the approval of the applicant's TPS on March 3, 2006.

On appeal, counsel at that time argued that the applicant was only convicted of one misdemeanor offense relating to the applicant's previous arrest on June 6, 2000. Counsel further argued that the second arrest on July 10, 2002, was a result of a bench warrant issued by a judge and that the applicant was not convicted of a second misdemeanor offense. Counsel also s of the final court dispositions from the Dade County Florida, County Court (case number

According to the court documentation, the applicant was found guilty of "Driving Under the Influence" (Florida State code: 216.193), a misdemeanor, on June 27, 2000.

The court dispositions in the record of proceedings also reflect that the applicant was arrested again on July 18, 2002, as a result of a bench warrant issued in conjunction with his previous arrest on June 27, 2000. Therefore, according to the record, the applicant was convicted of only one misdemeanor offense in the United States.

However, a review of the record shows that the applicant filed his initial TPS application on October 30, 2002, after the initial registration period had closed.

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 IOI(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.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 30, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record does not contain evidence to establish the applicant's eligibility for TPS late registration; therefore, the case is remanded so that the director may request the necessary documentation and issue a new decision based on the findings.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act,

8 U.S.C. § 1361.

ORDER: The case is remanded to the director for entry of a new decision.