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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

JUN 06 2005

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 01 220 52181]

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: 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant 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.
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> *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.
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> 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals that the applicant was arrested in South Gate, California, on June 7, 1999, and charged with one count of "DRIV. LIC. SUS/ETC. UI/RFUSL" and one count of driving under the influence of alcohol with a blood alcohol content to 0.08% or greater.

Pursuant to a letter dated February 2, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. He was also requested to provide additional evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States

since March 9, 2001. In response, the applicant submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 29, 2004.

On appeal, the applicant submits the following evidence:

1. a photocopy of a letter dated November 14, 2000, from City Hall, Vernon, California, informing the applicant that his car had been towed and stored in Huntington Park, California, on November 10, 2000, because he was arrested;

2. a photocopy of a court referral for community service form dated February 23, 1998, indicating that the applicant had completed the court-mandated hours of community service work

3. a photocopy of a "Verification of Attendance" form dated January 20, 1998;

4. a photocopy of a "Notice of Completion Certificate" dated February 20, 1998, indicating that the applicant enrolled in the Diversion Safety Program, Inc., in Huntington Park, California, on July 18, 1997, and completed the course on February 20, 1998;

5. a photocopy of a form dated February 20, 1998, indicating that the applicant had successfully completed the AB-541 program as required by the court;

6. a photocopy of a "Verification of Enrollment, First Offender Program," form dated July 18, 1997, indicating that the applicant had enrolled in the Diversion Safety Program Inc. on that date; and,

7. photocopies of various documents relating to the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant has provided various court documents relating to the charges detailed above, but he has failed to provide any evidence revealing the final court disposition of his arrest on June 7, 1999. 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).

Beyond the decision of the director, the applicant has not provided sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, and the application also must be denied for these reasons.

It is noted that the applicant filed a Form I-589, Request for Asylum in the United States, on February 6, 1997. The application was denied on June 27, 1997, because the applicant failed to appear for his scheduled asylum interview for good cause. He was referred for a deportation hearing before an Immigration Judge.

On April 27, 1998, the asylum application was withdrawn, and the Immigration Judge granted the applicant the privilege of voluntary departure from the United States to El Salvador on or before August 20, 1998, with an alternate order of deportation if the applicant failed to depart as ordered. The applicant failed to depart in compliance with the grant of voluntary departure. On May 1, 1999, the District Director, Los Angeles, issued a Form I-205, Warrant of Removal/Deportation, and a Form I-166 notice ordering the applicant to appear at the Los Angeles District Office on June 8, 1999, for deportation to El Salvador. The applicant failed to appear to be deported as ordered. To date, the Warrant of Deportation remains outstanding.

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.