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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE:

[Redacted]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 17 2005

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.

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 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 determined that the applicant had failed: (1) to establish that he had continuously resided in the United States since February 13, 2001; (2) to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing his application; and (3) to provide the court documents concerning his criminal records. The director, therefore, denied the application.

On appeal, counsel submits a statement.

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.

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.

The record reveals the following offenses:

- (1) On May 19, 1992, in the Second Judicial District Court of the State of Nevada, County of Washoe, Case No. [REDACTED] (arrest date April 22, 1992), the applicant was indicted for Count 1, committing fraudulent acts involving gaming, in violation of NRS 465.070 and NRS 465.088, a felony; and Count 2, conspiracy to the crime of committing fraudulent acts involving gaming, in violation of NRS 199.48, NRS 465.070, and NRS 465.088, a gross misdemeanor. On June 25, 1992, the applicant was convicted of Count 2. He was sentenced to imprisonment in the county jail for the term of one year "to run concurrently with the term he is presently serving." Count 1 was dismissed. The record contains no information regarding the other charges for which the applicant was "presently serving."
- (2) The Federal Bureau of Investigation (FBI) report shows that on April 22, 1993, in Reno, Nevada, the applicant was arrested for Count 1, fraudulent acts, a felony; Count 2, conspiracy, a gross misdemeanor; and Count 3, burglary, a felony.
- (3) The FBI report shows that on October 19, 1989, in [REDACTED] the applicant was arrested for Count 1, receiving stolen vehicle, a felony; and Count 2, prowling, a misdemeanor.

The applicant was requested on January 29, 2002, to submit: (1) evidence to show that he had continuously resided in the United States since February 13, 2001; (2) evidence to show that he had been physically present in the United States from March 9, 2001, to the date of filing his application; and (3) the final court

disposition of every charge against him, including his arrests listed in Nos. 2 and 3 above. In response, the applicant furnished only the court disposition of his conviction detailed in No. 1 above.

The director determined that the applicant had failed to provide evidence necessary for the proper adjudication of the application and denied the application on April 8, 2003.

On appeal, counsel asserts that the applicant personally traveled to Nevada to obtain what he believed was all of his court records, and that he had sent the disposition with his TPS application. Although counsel indicates that he needs an additional 90 days in which to submit additional evidence, to date, no additional evidence has been provided.

The applicant has failed to provide any evidence revealing the final court dispositions of his arrests detailed in Nos. 2 and 3 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).

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.