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U.S. Citizenship
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Services

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FILE:



[EAC 01 190 55579]

OFFICE: VERMONT SERVICE CENTER

DATE: JUN 27 2006

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) subsequently dismissed an appeal from the denial decision. The matter is once again before the AAO on motion to reopen. The motion will be granted and the appeal will again 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 on October 7, 2003, because she found that the applicant had failed to submit requested court documentation relating to his criminal record. On November 5, 2003, the applicant filed an appeal from the denial decision. The Director (now Chief) of the AAO dismissed the appeal on March 28, 2005, because he found that the applicant failed to submit the final court disposition of his arrest.

On motion to reopen, the applicant submits a statement and photocopies of documents previously submitted in support of the application.

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.
8 C.F.R. § 244.1.

The record reveals that the applicant was arrested in Nashville, Tennessee, on July 4, 1998, and charged with disorderly conduct and “RES ARR NO WEA/AGGRS.”

Pursuant to a letter dated July 23, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant, in response, submitted a clearance letter dated August 8, 2003, from the Central Record Division, Metro Nashville Police Department, Davidson County Only, reflecting no criminal record for [REDACTED], Social Security number [REDACTED].

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on October 7, 2003.

On November 5, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that his full name is [REDACTED] but he used only [REDACTED] as his name. The applicant explained that the Metro Nashville Police Department clearance letter reported no criminal record for [REDACTED] and stated that [REDACTED] and [REDACTED] are one and the same person. He submitted another copy of the police clearance letter previously submitted in response to the Notice of Intent to Deny. The Director of the AAO dismissed the appeal on March 28, 2005, finding that the applicant had once again failed to provide the final court disposition of his arrest.

On motion to reopen the previous AAO decision, the applicant repeats his assertion that he has provided the requested police clearance letter and submits a third copy of the police clearance letter previously submitted in response to the Notice of Intent to Deny.

The police clearance letter contains the following disclaimer:

The correctness and completeness of this "record check" are dependent upon the accuracy of the information which you provide: NAME, DATE OF BIRTH, SOCIAL SECURITY NUMBER OR DRIVERS LICENSE.

In this case, the applicant did not provide his full and correct name, address, date of birth, driver's license number, or his date of birth on the record check request form. The Federal Bureau of Investigation (FBI) fingerprint results report reflects the applicant's name at the time of his arrest as [REDACTED] not as [REDACTED].

The applicant has failed to provide court documents reflecting the final court dispositions of his arrests detailed 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 director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant's 2005 FBI fingerprint results report reflects a subsequent arrest in East Boston, Massachusetts, on September 13, 2004, on the charge of assault and battery. This offense must be addressed in any future proceeding before Citizenship and Immigration Services.

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.