



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 226 53983]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 01 2007

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.

John H. Vaughan
for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to a drug-related conviction.

On appeal, the applicant submits a statement and additional documentation.

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 TPS 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, 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.

A Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, reveals that the applicant was arrested in Union City, New Jersey, on November 14, 1993, and charged with possession of marijuana or hashish in violation of 2C:35-10A(4). On February 6, 2002, the applicant was requested to submit the final court disposition of this arrest. The applicant, in response, submitted a letter, dated March 14, 2002, from the Department of Public Safety, Bureau of Criminal Identification, Union City, New Jersey, stating that the disposition of the applicant's case was unknown.

The director denied the application on October 27, 2003, because he found the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act as an alien who has a drug conviction.

On appeal, the applicant states that he qualifies for a waiver of his drug offense because he has been a hard-working and honest person in the 12 years since his arrest, and that he is now the father of four United States citizen children. The applicant submits evidence relating to his residence and physical presence in the United States, the birth certificates of his children, and letters from acquaintances attesting to the applicant's honesty and good character. He has not, however, provided the final court disposition of his arrest.

The director denied the application because he found the applicant to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The record, however, does not contain a document revealing the final court disposition of the applicant's arrest. The fact remains that the applicant was provided with an opportunity to provide the final court disposition and has failed to do so, first in response to the request for additional evidence, and again on appeal. Therefore, it is concluded that the applicant is ineligible for TPS 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 will be affirmed.

An alien applying for TPS 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.