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U.S. Citizenship
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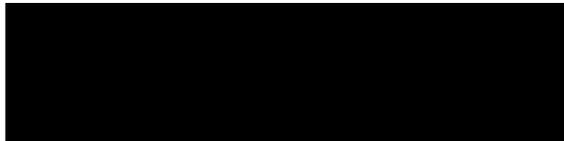
OFFICE: Vermont Service Center

DATE: JUN 04 2007

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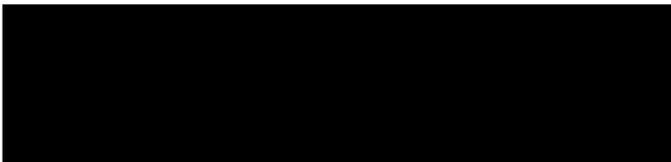
IN RE:

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:



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, Chief
Administrative Appeals Office

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

The applicant is a 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 the ground that the applicant failed to provide the final court dispositions of four arrests in the United States.

On appeal counsel submits documentary evidence of the court dispositions of each of the applicant's four arrests.

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 shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on May 28, 2002. On August 18, 2003, the director sent the applicant a notice of intent to deny, in which the applicant was requested to submit documentation of the final dispositions of four arrests between 1987 and 1997, including evidence in regard to any convictions as to whether they were classified as a felony or a misdemeanor. The applicant was given 30 days to submit the requested evidence to the Vermont Service Center. After the applicant failed to respond to the notice, the director denied the application on July 21, 2004, for failure to overcome the grounds of denial.

The applicant filed a timely appeal and has submitted evidence of the final court dispositions of his four arrests (which he had erroneously sent to an office in Newark, New Jersey, on April 6, 2004). The materials submitted on appeal, together with the FBI (Federal Bureau of Investigation) Identification Record that prompted the earlier notice of intent to deny, provide the following information about the four arrests:

1. On March 6, 1987, the applicant was arrested by the Police Department in Houston, Texas, on a charge of aggravated assault. The applicant pleaded no contest to the charge, was adjudged guilty of the offense, which was categorized as a misdemeanor, by the District Court of Harris County, Texas, on March 24, 1987, and was sentenced to 20 days in jail.

2. On June 8, 1989, the applicant was arrested by a U.S. Marshall in Laredo, Texas, on the charge of smuggling an alien into the United States. The indictment was dismissed by the U.S. District Court for the Southern District of Texas, Laredo Division, on August 16, 1989.
3. On August 6, 1993, the applicant was arrested by the Hillside Township Police Department in Hillside, New Jersey, on a charge of unlawfully possessing a weapon. The charge was dismissed by the Municipal Court of Hillside on April 29, 1994.
4. On June 23, 1997, the applicant was arrested by the Elizabeth Police Department in Elizabeth, New Jersey, on a charge of simple assault. The applicant was found guilty of the offense by the Municipal Court of Elizabeth, New Jersey, on November 18, 2003, and assessed a fine of \$305.

Thus, the applicant was convicted on two of the criminal charges – a misdemeanor crime of aggravated assault in 1987 and a “simple assault” offense in 1997 which the Municipal Court of Elizabeth, New Jersey, in its 2003 disposition identified as “2C:12-1A” in the New Jersey Criminal Code (Code) but did not specifically categorize as a felony, a misdemeanor, or some other offense. Under the New Jersey Criminal Code crimes are classified into first, second, third, and fourth degrees, in descending order of severity. *See* Code at 2C:43-1. An offense declared to be a crime without specification of degree is considered a fourth degree crime. *See id.* The Code at 2C:43-6 specifies that “a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (1) . . . a crime of the first degree . . . between 10 years and 20 years;
- (2) . . . a crime of the second degree . . . between five years and 10 years;
- (3) . . . a crime of the third degree . . . between three years and five years;
- (4) . . . a crime of the fourth degree . . . [up to] 18 months.”

As the New Jersey Criminal Code makes clear, even fourth degree crimes (which include offenses declared to be crimes without specification of degree) are punishable by up to 18 months imprisonment. That makes the applicant’s simple assault conviction in 2003 a felony for immigration purposes under 8 C.F.R. § 244.1, regardless of whether any such sentence was imposed on the applicant.

Thus, the applicant is ineligible for TPS, under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), due to his record of two criminal convictions, detailed above. The director's decision to deny the application for TPS will therefore be affirmed.

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 that burden.

ORDER: The appeal is dismissed.