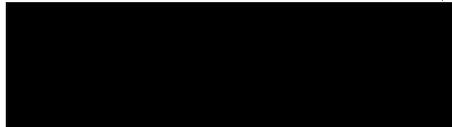




U.S. Citizenship
and Immigration
Services

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OFFICE: St. Paul District

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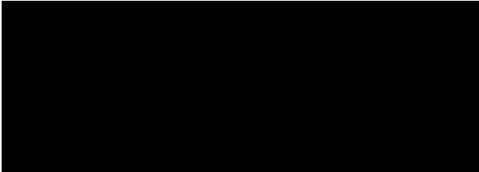
Applicant:



APPLICATION:

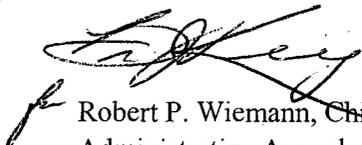
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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, reopened, and denied again by the District Director, St. Paul, Minnesota. 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 Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director initially denied the application on April 11, 2003, because he found the applicant had been convicted of two or more misdemeanors.

On May 9, 2003, counsel filed an appeal from the district director's decision. Counsel submitted a brief and the final court dispositions of the applicant's criminal charges.

On August 18, 2003, the district director reopened the matter and denied the application again because he found the applicant had been convicted of two or more misdemeanors. The district director also noted that the check submitted by counsel to pay the filing fee was returned as not payable. Therefore, the director concluded that the appeal was not properly filed.

On September 15, 2003, counsel filed an appeal from the second denial of the application. On appeal, counsel submits a brief.

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.

The record reveals the following offenses:

- (1) On July 12, 2000, the applicant was arrested and charged with domestic assault in violation of section 609.2242, a fifth degree misdemeanor. On August 2, 2000, the applicant pled guilty to the amended charge of disorderly conduct in violation of section 609.72, a misdemeanor, in the Hennepin County Criminal Court, State of Minnesota. (Case Number [REDACTED])

- (2) On October 15, 2000, the applicant was arrested by police officers in Brooklyn Park, Minnesota, and charged with domestic assault in violation of section 609.2442, a misdemeanor. On January 12, 2001, the charge was continued for one year for dismissal in the Hennepin County Criminal Court, State of Minnesota. (Case Number [REDACTED]). The final disposition of this offense is unknown.
- (3) On August 20, 2001, the applicant was charged with grand theft issuance of a dishonored check in violation of section 609.535, Subsections 2 and 2(a)(2). On July 30, 2002, the charge was continued for one year for dismissal provided the applicant paid restitution in the amount of \$460 by October 1, 2002. The applicant failed to pay restitution by the required date, and a bench warrant was issued. On November 12, 2002, the applicant paid restitution in full, and on November 19, 2002, the bench warrant was returned. (Case Number [REDACTED]). The final disposition of this offense is unknown.
- (4) On December 6, 2001, the applicant was charged with passing worthless checks in violation of section 609.535. On October 1, 2002, the charge was dismissed after the applicant paid restitution in the amount of \$40.
- (5) On May 1, 2002, the applicant was arrested by police officers in Brooklyn Center, Minnesota, and charged with check forgery in violation of section 609.631, subsection 2.1, a felony. On November 25, 2002, the applicant was placed in the De Novo Adult Diversion Program by the Hennepin County Criminal Court, State of Minnesota. The record contains a letter dated April 16, 2003, from [REDACTED] Adult Counselor, Operation De Novo, stating that the applicant had not been convicted of felony check forgery as of the date of her letter, and indicating that his case would be dismissed when he completed the diversion program on February 11, 2004. To date, the record does not contain any evidence indicating whether the applicant completed the program and the felony charge was dismissed, or whether he failed to complete the program and the case was returned to the court for prosecution as a felony. (Case No. [REDACTED]).
- (6) On May 12, 2002, the applicant was arrested by the Minnesota Highway Patrol and charged with one count of driving while intoxicated in violation of section 169(a).20, Subsection 1(1), and one count of refusing to take a breathalyzer test in violation of section 169.121, Subsection (1)(a) 3(B). On July 30, 2002, the applicant pled guilty to count 1, driving while intoxicated, a misdemeanor. Count 2, refusal to take the test, was dismissed on the motion of the prosecutor. (Case Number 02037637).
- (7) On June 4, 2002, the applicant was charged with driving after revocation of his driver's license in violation of section 171.242, a misdemeanor. He pled guilty to this charge in the Hennepin County Criminal Court, State of Minnesota, on October 4, 2002. (Case Number [REDACTED]).
- (8) On June 20, 2002, the applicant was arrested by police officers in Brooklyn Park, Minnesota, and charged with theft in violation of section 609.52, a misdemeanor. On July 30, 2002, the applicant pled guilty in the Hennepin County Criminal Court, State of Minnesota, to the amended charge of theft in violation of section 609.52, a petty misdemeanor. (Case Number [REDACTED]).

- (9) On October 4, 2002, the applicant pled guilty in the Hennepin County Criminal Court to petty misdemeanor theft in violation of section 609.52. (Date of Arrest: June 4, 2002; Case Number [REDACTED])
- (10) On October 11, 2002, the applicant was charged with passing worthless checks in violation of section 609.535. On December 6, 2002, the applicant pled not guilty to this charge. On January 17, 2003, the charge was continued one year for dismissal, with the proviso that if the applicant's "stolen identity was falsely reported by him, this matter may be reinstated." (Case Number [REDACTED])

On appeal, counsel asserts that of the six offenses listed in the Notice of Denial dated August 18, 2003, one resulted in a dismissal, one is pending dismissal, two are petty misdemeanors, and two are "driving offences that do not rise to the level of a misdemeanor under 8 C.F.R. 244.1" because the applicant never served more than five days in jail for either conviction. Therefore, counsel asserts that the applicant has not been convicted of two or more misdemeanors.

The definition of "misdemeanor" set forth at 8 C.F.R. § 244.1 does not rest on the actual punishment that was ordered by the court. Rather, the determination is based on the maximum possible punishment that can be imposed, "regardless of the term such alien actually served, if any."

The applicant has been convicted of two counts of petty misdemeanor theft as detailed in Nos. 8 and 9 above. Under Minnesota Statute, petty misdemeanors do not carry a possible term of incarceration. Therefore, counsel is correct in asserting that these convictions are not considered misdemeanors for immigration purposes pursuant to 8 C.F.R. § 244.1.

However, the record also confirms that the applicant has been convicted of the offenses detailed in Nos. 1, 6, and 7 above. Each of these offenses is punishable by up to 90 days incarceration. Therefore, contrary to counsel's assertion, these offenses constitute misdemeanor convictions for immigration purposes. The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, it is noted that the applicant may also be ineligible for TPS because it appears that he had been firmly resettled in Guinea prior to traveling to the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act. However, since the details of his stay in Guinea are not clear from the record of proceedings we will not pursue this possible ground of ineligibility at this time.

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.