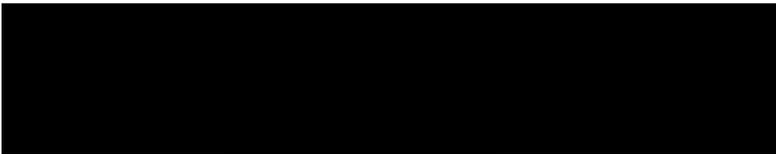




U.S. Citizenship
and Immigration
Services

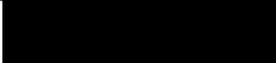
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prevent clearly unwarranted
invasion of personal privacy**



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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

[EAC 06 364 85562]

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 Vermont Service Center. 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be 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 after determining that the applicant had failed to establish he was eligible for late initial registration and because he failed to provide the final court dispositions for seven arrests.

On appeal, the applicant states:

Please forgive me for not sending all the information right now. The reason is because the Department of Justice haven't sent me a copy of my record review. When I first contacted the Bureau of Criminal they told me that I needed alive scan application and them sent it back to them with a fee of \$ 25.00. I'm sending prove that I already done my lives can and now I'm just waiting for my record review and all the information on records that have been destroyed. As soon as I get all my records I will send it to the AAO within 30 days of the day I signed the Form I-290B. that's why I'm requesting more time in order to send All the evidence for information I've been asked for.

It is noted that no further criminal disposition documentation has been received from the applicant since he filed his appeal.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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.

The record reflects that the applicant is eligible for late initial registration because he has a pending Form I-589, Request for Asylum in the United States, in his file. 8 C.F.R. § 244.2(f)(2)(ii).

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

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 reflects the following offenses:

- (1) On March 21, 2001, the applicant was convicted by a Judge of the Superior Court of California, County of Orange, of alcohol related reckless driving, a misdemeanor. (Case [REDACTED])

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows the following:

- (2) On August 5, 1990, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with vandalism.
- (3) On August 25, 2005, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with prowling. It appears from the FBI report that he subsequently was convicted of disorderly conduct for loitering on private property, and sentenced to two days in jail and placed on probation for one year. However, despite the director's request, the applicant has failed to provide the actual court disposition for this offense.
- (4) On July 24, 1992, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with trespassing and resisting and obstructing a police officer. It appears from the FBI report that he was convicted by a Judge of the Municipal Court in Newport Beach, California, of trespassing in an occupied property without consent and sentenced to participation in a work program. However, despite the director's request, the applicant has failed to provide the actual court disposition for this offense.
- (5) On August 6, 1992, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with trespassing. It appears from the FBI report that he was convicted by a Judge of the Municipal Court in Newport Beach, California, of trespassing in an occupied property without consent and sentenced to 92 days in jail and 12 months probation. However, despite the director's request, the applicant has failed to provide the actual court disposition for this offense.
- (6) On January 14, 1993, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with trespassing. Despite the director's request, the applicant has failed to provide the actual court disposition for this offense.
- (7) On September 9, 2001, the applicant was arrested by the Police Department in Costa Mesa, California, and charged with "001 COUNTS OF FORCE/ADW NOT FIREARM, GBI" and one count of conspiracy to commit a crime. Despite the director's request, the applicant has failed to provide the actual court disposition for this offense.

- (8) On September 1, 2006 the applicant was arrested by the Police Department in Costa Mesa, California, and charged with "001 COUNTS OF OBSTRUCT/ETC PUB OFCR/ETC." It appears the applicant was not formally charged with this offense.

In a Notice of Intent to Deny dated March 7, 2007, the applicant was requested to submit certified judgment and conviction documents for the arrests outlined above. The applicant has not submitted court dispositions for his arrests for items number (2) through (7) listed above. Accordingly, he 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).

Although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore, the application must also be denied for this additional reason.

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.