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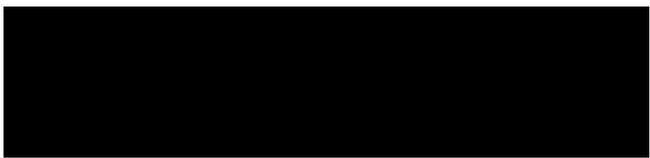
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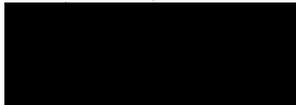


U.S. Citizenship
and Immigration
Services

MI



FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: APR 07 2005

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 "R. Wiemann".

Robert P. Wiemann, Director
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 claims 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 because he found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant states that his mistakes occurred in 1998, and that he is now married and is an honest worker. He submits additional evidence in an effort to establish his residence and physical presence in the United States.

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 parole; 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.

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.

The record reveals the following offenses:

- (1) On April 24, 1998, in Rockville, Maryland, the applicant was arrested for Count 1, theft, and Count 2, theft (Case No. [REDACTED]). On October 8, 1998, the District Court of Maryland, Montgomery County, entered a "Nolle Prosequi" as to both Counts 1 and 2.
- (2) On June 24, 1998, in Rockville, Maryland, the applicant was arrested for Count 1, burglary in the first degree; Count 2, theft; and Count 3, theft (Case No. [REDACTED]). On July 24, 1998, the District Court of Maryland, Montgomery County, entered a "Nolle Prosequi" as to all three counts.
- (3) On November 7, 1998, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] the applicant was indicted for Count 1, possession of a controlled dangerous substance-marijuana, a misdemeanor; and Count 2, possession of a controlled dangerous substance paraphernalia, a misdemeanor. On December 18, 1998, the applicant was convicted of Count 1. He was placed on probation for a period of 6 months, and fined \$300. Count 2 was dismissed.
- (4) On October 25, 2001, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] the applicant was convicted of Count 1, driving a vehicle on highway at speed exceeding limit, an infraction; and Count 2, driving under the influence of alcohol, a misdemeanor. He was ordered to pay \$98 in fines and costs as to Count 1. He was placed

on probation for a period of 11 months, and ordered to pay \$555 in fines and costs as to Count 2.

The applicant is ineligible for TPS due to his two misdemeanor convictions (detailed in Nos. 3 and 4 above), and because he is inadmissible to the United States pursuant to under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related conviction. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application for this reason will 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 this burden.

ORDER: The appeal is dismissed.