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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 138 51322]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 01 2005

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: 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.

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 (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 denied the application because he found the applicant ineligible for TPS due to his having been convicted of a felony offense committed in the United States.

On appeal, the applicant submits a brief statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on March 11, 2002. A criminal history check conducted in connection with that application revealed the following offenses, each occurring in Hudson County, New Jersey:

- (1) November 3, 1999, the applicant was arrested and charged with Interfere Custody of Children, in violation of section 2C:13-4A.
- (2) On November 4, 1999, the applicant was arrested and charged with (a) Sexual Assault, in violation of section 2C:14-2C(5); (b) Endanger Welfare of Children, in violation of section 2C:24-4; and, (c) Child Abuse, in violation of section 9:6-3.

Pursuant to a letter dated May 5, 2003, the applicant was requested to submit the final court dispositions for each of the charges detailed above. The applicant was also requested to submit evidence of his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

In response to the director's request, the applicant submitted a photocopy of the identification page from his El Salvadoran passport. He also submitted documentation from Hudson County Superior Court indicating that he was convicted of the charge detailed in No. 2(c), above, Child Abuse, on June 26, 2000. The charges detailed in Nos. 1, 2(a), and 2(b) were dismissed.

On July 10, 2003, the director denied the application due to the applicant's conviction of a felony, No. 2(c), committed in the United States.

On appeal, the applicant states that although he was convicted by a judge, he successfully completed his probation and believes that he is rehabilitated. He further states that without any intention of committing a crime, he was accused and, as a result, has suffered beyond description.

Based on a review of the record, it is concluded that the applicant is ineligible for TPS due to his having been convicted of a felony offense. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

It is noted that, beyond the decision of the director, the applicant has not submitted evidence to establish that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. Therefore, application may also not be approved for these reasons.

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.