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U.S. Citizenship  
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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: AUG 01 2005

[EAC 01 231 61182]

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.

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 that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a letter and additional documentation.

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 July 19, 2001. At the time of filing his application, the applicant indicated that he had never been arrested. However, a criminal history check conducted in connection with that application revealed the following offenses, each occurring in Suffolk County, New York:

- (1) On August 9, 1995, the applicant was charged with Driving While Intoxicated.
- (2) On March 28, 2000, the applicant charged with Driving While Intoxicated and “Aggravated Unlicensed 1<sup>st</sup> Operation of a Law.”

Pursuant to a letter dated April 28, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit evidence of his qualifying continuous physical presence in the United States.

In response to the director’s request, the applicant submitted documentation relating to his residence and physical presence in the United States. He also submitted a letter from the Suffolk County, New York, Department of Probation, indicating that he was sentenced to five years probation for felony D.W.I. on August 16, 2000.

On September 23, 2003, the director denied the application for failure to provide the final court disposition of the applicant's 1995 arrest.

On appeal, the applicant submits a Transcript of Record from the Suffolk County District Court, Central Islip, New York, indicating that on April 18, 1996, he was fined \$590 and received probation for a violation of Driving While Intoxicated. (Agency case [REDACTED])

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.

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.