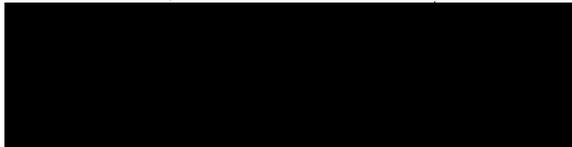


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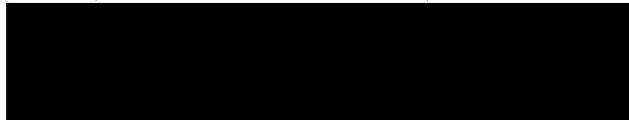
OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 12 2005**

[EAC 03 077 50083]

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:



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

On appeal, counsel submits the requested court documentation.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

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) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on October 16, 1992, in Chicago, Illinois, the applicant was arrested for assault. The final disposition of this arrest is not reflected in the record.
- (2) The FBI report shows that on May 5, 1997, in Chicago, Illinois, the applicant was arrested for "BATTERY/DOMESTIC AM." The court record shows that because the complaining witness was not in court on September 11, 2003, the case was stricken off the docket with leave to reinstate.
- (3) On December 12, 1998, the applicant was arrested and charged with possession of a Scheduled I or II controlled substance, "cocaine & derivs," 18.2-250 Virginia Code, a felony. On August 16, 2001, in the General District Court, Fairfax County, Virginia, Case No. [REDACTED] the charge was amended to possession of a Schedule III drug, 18.2-205(a)(b), Code of Virginia, a misdemeanor. He was ordered to pay \$250 in fines and costs, and his driver's license was suspended for 6 months.
- (4) On November 13, 2001, in the General District Court, Fairfax County, Virginia, Case No. [REDACTED] arrest date August 5, 2001, the applicant was convicted of concealment of merchandise,

18.2-103, Code of Virginia, a class 1 misdemeanor. He was sentenced to 30 days in jail, suspended, and ordered to pay \$160 in fines and costs.

- (5) On August 9, 2001, the applicant was arrested for Count 1, destruction of property, 18.2-388 Code of Virginia; Count 2, public swearing or intoxication, 18.2-388, a misdemeanor; and Count 3, concealment, price alter merchandise, 18.2-103, a misdemeanor. On October 2, 2001, in the Loudoun County General District, Virginia, Case No. [REDACTED] the applicant was convicted of Count 1. He was sentenced to 10 days in jail, and ordered to pay \$172 in fines and costs. Counts 2 and 3 were dismissed.

The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, and because he is inadmissible to the United States 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 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.