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FILE:



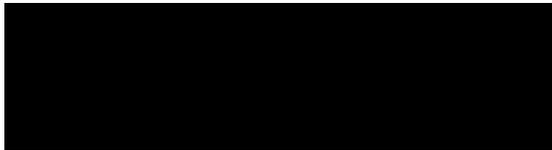
Office: California Service Center

Date: AUG 23 2005

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IN RE:

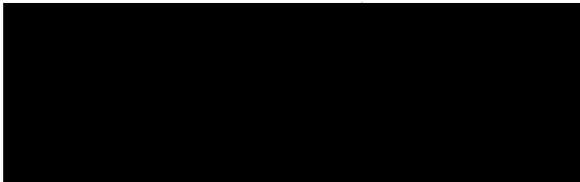
Applicant:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office 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 under Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a) for having been convicted of two or more misdemeanors.

On appeal, counsel for the applicant requests a copy of the record of proceedings, and an additional 30 days to submit a brief. It is noted that to-date, no additional brief or evidence has been submitted. Therefore, the record shall be considered complete.

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.

The record reveals the following convictions:

On November 10, 2003, the applicant was arrested by the Sheriff's Office, San Diego, California, and charged with:

1. driving under the influence of alcohol/drugs in violation of section 23152(a) of the California Vehicle Code;
2. driving while having a measurable blood alcohol;
3. driving when privilege suspended-test refusal; and
4. unlicensed driver, in violation of California Vehicle Code Section 12500(a).

On November 21, 2003, the applicant was convicted by the Superior Court of California, County of San Diego, North County Division, of count 2, driving while having a measurable blood alcohol level, VC23152(b), with prior admitted, a misdemeanor [counts 1, 3 and 4 were dismissed];

On January 12, 2003, the applicant was arrested by the Sheriff's Office, San Diego, California, and charged with:

1. driving under the influence of alcohol/drugs in violation of section 23152 of the California State Vehicle Code;
2. driving while having a measurable blood alcohol level, in violation of section 25152(b) of the California Vehicle Code;
3. hit and run driving, in violation of section 20002(a) of the California Vehicle Code;
4. driving without a license, in violation of section 12500(a) of the California Vehicle Code; and
5. failing to furnish evidence of financial responsibility in connection with an accident, in violation of section 16028(c) of the California Vehicle Code.

On January 14, 2003, the applicant was convicted by the Superior Court of California, County of San Diego, of count 2, driving while having a measurable blood alcohol level, and count 5, failing to furnish evidence of financial responsibility in connection with an accident, a misdemeanor [counts 1, 3 and 4 were dismissed].

On February 16, 2003, the applicant was charged with:

1. one count of battery of a current or former significant other, in violation of section 243(e)(1) of the California Penal Code; and
2. one count of battery, in violation of section 242 of the California Penal Code.

On February 26, 2003, the applicant was convicted by the Superior Court of California, County of San Diego, of count 2, battery, a misdemeanor [count 1 was dismissed].

The applicant is ineligible for TPS due to his having been convicted of two or more misdemeanors, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.