



U.S. Citizenship
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FILE: [REDACTED]
[SRC 01 227 62247]

Office: TEXAS SERVICE CENTER

Date: **AUG 29 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 after determining that the applicant had failed to submit requested documentation concerning his past arrests.

On appeal the applicant states that he was surprised that his application had been denied and indicates that the notice was the first one that he had received relating to his case. He expresses his readiness to appear for fingerprinting. The applicant forwards court documents that he obtained as the result of a records search conducted in Texas by the Harris County District Clerk.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On January 23, 2004, the applicant was convicted of evading arrest with a motor vehicle, (Cause No. [REDACTED], a felony, by a presiding judge of the 209th District Court of Harris County, Texas.
- (2) On June 24, 1996, the applicant was convicted of driving while his license was suspended, (Cause No. [REDACTED], a misdemeanor, by a presiding judge of the County Criminal Court At [REDACTED] of Harris County, Texas.
- (3) On November 15, 1996, the applicant was convicted of driving while his license was suspended, (Cause No. [REDACTED], a misdemeanor, by a presiding judge of the County Criminal Court At [REDACTED] of Harris County, Texas.
- (4) On November 15, 1996, the applicant was convicted of driving while intoxicated, (Cause No. [REDACTED] 2), a misdemeanor, by a presiding judge of the County Criminal Court At Law [REDACTED] of Harris County, Texas.

The applicant is ineligible for TPS due to his record of one felony and three misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Consequently, the director's decision to deny the application is affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has not provided a copy of his birth certificate along with an English translation, nor does the record contain copies of the applicant's passport or national identity documentation. Additionally, the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the required time period. Therefore, the application shall be denied for these additional 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.