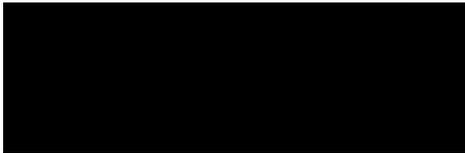


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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 04 2005
[WAC 01 226 52979]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 determined that the applicant had failed to respond to a request for certified copies of the final court disposition of his arrest on February 11, 2000. The director, therefore, denied the application.

On appeal, the applicant states that he did send the requested information on February 10, 2003. He submits additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, indicates that the applicant was arrested in Fresno, California, on February 11, 2000, for disorderly conduct, under the influence of drugs, 647(f) PC, a misdemeanor offense. Therefore, the applicant was requested on June 3, 2003, to submit the final court dispositions of all arrests, including this arrest. Because the applicant failed to comply with this request, the director denied the application on March 10, 2003.

On appeal, the applicant states that he did submit the requested information. He submits a copy of a United States Postal Service Track/Confirm inquiry in an effort to establish that he mailed an item that was delivered on February 10, 2003, addressed to "I.N.S CERTIFIED." This evidence, however, is insufficient to establish that the item the applicant submitted was the requested final court disposition of his February 11, 2000 arrest.

The applicant also submits, on appeal, court records of the Superior Court of California, County of Fresno, Firebaugh, California, indicating that on October 9, 1998, Case No. [REDACTED], the applicant was convicted of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. He was placed on conditional sentence for a period of 5 years, ordered to spend 180 days in jail, and pay \$1,620 in fines and costs.

The applicant is ineligible for TPS based on his failure to comply with the director's request to submit the final court dispositions of all his arrests, including his February 11, 2000, arrest. Accordingly, the director's decision to deny the TPS application will be affirmed.

The record of proceeding contains a Warrant of Removal/Deportation, Form I-205, issued on March 1, 1998, based upon a final order by the Board of Immigration Appeals. On June 10, 2000, the applicant was notified to appear at the Bakersfield Service office on August 23, 2000, for his enforced departure. There is no evidence in the record that the applicant appeared as required for his enforced departure.

The burden of proof is upon the applicant to establish 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.