

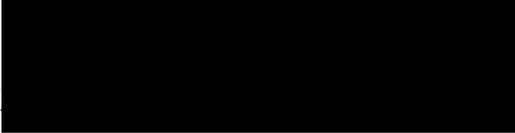
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U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 01 190 55699]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 08 2005

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.

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, Vermont 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 official court documentation concerning criminal offenses committed. The director, therefore, denied the application.

On appeal, the applicant submits additional documents.

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 offenses:

- (1) On November 15, 2001, in the District Court of the County of Suffolk, New York, Docket [REDACTED] (arrest date November 3, 2001), the applicant was convicted of Count 1, operating a motor vehicle while under influence of drug or alcohol, VTL 1192.2, a misdemeanor; and Count 2, aggravated unlicensed operation of a motor vehicle in the second degree, VTL 511.2(a), a misdemeanor. He was placed on probation for a period of 3 years and his license was revoked as to Count 1. He was fined \$200 as to Count 2.
- (2) The Federal Bureau of Investigation (FBI) report shows that the applicant was arrested on November 3, 2001, for forgery in the second degree, PL 170.10, a felony. The applicant furnished, on appeal, the record of the District Court of the County of Suffolk, Case No. [REDACTED] indicating that the case was dismissed on January 28, 2002.
- (3) The FBI report shows that on January 13, 2000, the applicant was arrested in Suffolk County, New York, and charged with criminal mischief, and creating dangerous act. The court's final disposition of this arrest is not contained in the record.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in No. 1 above, and because he failed to provide the final court disposition of his arrest detailed in No.3 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 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.