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**U.S. Citizenship
and Immigration
Services**

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FILE:



[EAC 01 161 54295]

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:

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.

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 denied the application because the applicant had been convicted of two or more misdemeanors committed in the United States.

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) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on November 5, 1995, in Rockville, Maryland, the applicant was arrested for Count 1, possession of marijuana; Count 2, possession with intent to distribute; and Count 3, conspiracy. The applicant furnished the records of the District Court of Maryland (Case No. [REDACTED] indicating that a "nolle prosequi" was entered on December 1, 1995, as to Count 1-possession with intent to distribute; on July 24, 2001, as to Count 2-possession of a controlled dangerous substance; and on July 24, 2001, as to Count 3-possession with intent to distribute a controlled substance.
- (2) On September 5, 1997, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] (arrest date November 24, 1996), the applicant was convicted of concealed deadly weapon, a misdemeanor. He was placed on probation for a period of one year, 40 days credit for time served, and ordered to pay \$1000 in fines and costs.
- (3) The FBI report shows that on January 2, 1997, in Rockville, Maryland, the applicant was arrested for concealed deadly weapon. The applicant furnished the records of the District Court of Maryland (Case No. [REDACTED] indicating that a "nolle prosequi" was entered on the case on September 5, 1997.
- (4) The FBI report shows that on January 20, 1997, in Rockville, Maryland, the applicant was arrested for assault with a dangerous weapon. The court's final disposition of this arrest is not contained in the record.
- (5) The FBI report shows that on July 26, 1997, in Rockville, Maryland, the applicant was arrested based on a bench warrant for failure to appear regarding charges for (1) alcohol beverage violation, (2) concealed deadly weapon, and (3) concealed deadly weapon. The final dispositions of these charges are not contained in the record.

- (6) The FBI report shows that on October 7, 1997, in Rockville, Maryland, the applicant was arrested for Count 1, auto theft; Count 2, theft; Count 3, possession of a controlled dangerous substance (marijuana); and Count 4, possession of controlled dangerous substance paraphernalia. The final court's dispositions of these charges are not contained in the record.
- (7) On August 24, 1998, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] (arrest date June 22, 1998), the applicant was convicted of alcohol beverage/drinking in a retail area, a misdemeanor. He was ordered to pay \$100 in fines and costs.
- (8) On September 10, 1998, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] (arrest date June 29, 1998), the applicant was convicted of alcohol beverage/drinking in a retail area, a misdemeanor. He was placed on probation for a period of 12 months, and ordered to pay \$105 in fines and costs.
- (9) On November 10, 1998, in the District Court of Maryland, Montgomery County, Case No. [REDACTED] (arrest date September 26, 1998), the applicant was convicted of alcohol beverage/drinking in a retail area, a misdemeanor. He was ordered to pay \$100 in fines and costs.
- (10) The FBI report shows that on May 9, 1999, in Rockville, Maryland, the applicant was arrested and charged with assault 2nd degree. The court's final disposition of this charge is not contained in the record.

The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions, Nos. 2, 7, 8, and 9, detailed above, and because he failed to provide the final court disposition of his arrests detailed in Nos. 4, 5, 6, and 10 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.