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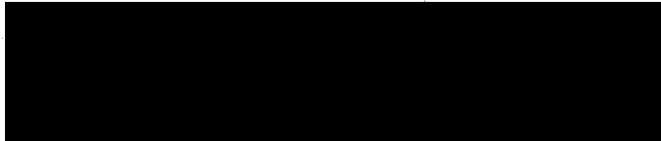
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OFFICE: VERMONT SERVICE CENTER

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.

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 court dispositions and police records under the name of [REDACTED]. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant never failed to comply with the director's request. He states that the applicant submitted the documentation of the four arrests under the name of [REDACTED] also known as [REDACTED]. He submits additional documentation.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report reveals the following offenses under the name of George A. Galias:

- (1) On August 15, 1991, in Long Beach, New York, the applicant was arrested and charged with petit larceny.
- (2) On July 31, 1993, the applicant was received at the Correction Facility, East Meadow, New York, to serve 20 days for his conviction of attempted petty larceny, a class B misdemeanor.
- (3) On March 21, 1995, in Mineola, New York, the applicant was arrested and charged with burglary 3rd. The FBI report shows that the applicant was subsequently convicted of petit larceny. On March 22, 1995, he was received at the Correction Facility, East Meadow, New York, to serve 90 days for his conviction of petit larceny, a class A misdemeanor, and 20 days for his conviction of attempted petit larceny, a class B misdemeanor.

Based on the FBI report, the applicant was requested on April 2, 2003, to submit the final dispositions of every charge against him. The director noted that when the applicant was arrested, he used the name [REDACTED]. In response, the applicant submitted documents from the City Court of Long Beach, County of Nassau, New York, indicating the following:

- (4) Arrest for consuming alcohol in public, PL 17-2, was dismissed on June 16, 1991 (Docket [REDACTED])

- (5) Convicted on July 19, 1993, for unreasonable noise, PL-16-6, an infraction (Docket No. [REDACTED])
- (6) Arrest for open alcohol container, PL 1097.5D, was dismissed on March 27, 1995 (Docket No. [REDACTED])
- (7) Arrest for trespassing, PL 140.05, was dismissed on March 27, 1995 (Docket No. [REDACTED])

Based on the applicant's failure to submit the court dispositions for Nos. 1, 2, and 3 above under the name of George A. Galias, the director denied the application on July 16, 2003.

On appeal, counsel submits the records of the Police Department, County of Nassau, Mineola, New York, under the names of [REDACTED] and [REDACTED] indicating the following:

- (8) Arrested on August 15, 1991, in Long Beach, New York, for petit larceny. The final disposition is not reflected in the record. (This arrest appears to relate to No. 1 above.)
- (9) Arrested on September 14, 1991, in Long Beach, New York, for petit larceny. The final disposition of this arrest is not reflected in the record.
- (10) Arrested on July 30, 1993, in Long Beach, New York, for Count 1, criminal trespass 2nd degree, and Count 2, petit larceny (warrant). (This arrest appears to relate to No. 2 above.)
- (11) Arrested on March 21, 1995, in North Long Beach, New York, for Count 1, Burglary 3rd degree, and Count 2, petit larceny (warrant). (This arrest appears to relate to No. 3 above.)

The applicant has failed to provide the actual final court dispositions of his arrests and/or convictions detailed in Nos. 1, 2, 3, 9, 10, and 11 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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.