

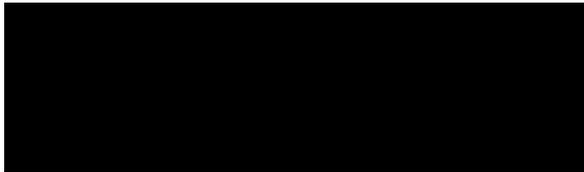
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: JUN 02 2005

[EAC 01 242 51894]

IN RE:

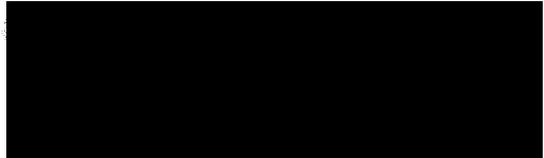
Applicant:



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 claims 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 because the applicant had failed to provide all of the requested court dispositions of his arrests.

On appeal, counsel asserts that the requested documents had been submitted, and that he is attaching a new copy. He states that it is the best record obtainable on short notice.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on July 13, 1985, in Washington, DC (Case No. [REDACTED]) for assault with a dangerous weapon-iron pipe. The applicant, on appeal, submits a copy of an electronic printout titled, "Superior Court of the District of Columbia, Criminal Information System, Summary by PDID." This printout shows the disposition of this offense on July 15, 1985, as "NO PAPERED." It is not clear from the record whether this printout was obtained from the court where the hearing took place, nor did the printout fully explain the outcome of this arrest. Further, the printout was not certified by the court.
- (2) The FBI report shows that the applicant was arrested on July 2, 1993, in Rockville, Maryland, for possession of a controlled dangerous substance, cocaine. The court's final disposition of this arrest is not contained in the record.
- (3) The FBI report shows that the applicant was arrested on October 12, 1999, in Baltimore, Maryland, for possession of cocaine. The court's final disposition of this arrest is not contained in the record, nor is there evidence that this arrest relates to No. 4 below.

- (4) On April 27, 2000, in the Circuit Court for Harford County, Bel Air, Maryland, Case No. [REDACTED], the applicant was convicted of Count 1, possession of a controlled dangerous substance, paraphernalia, 27-287A(c), a misdemeanor; and Count 2, driving a vehicle on highway at speed exceeding limit, 21-801.1. He was placed on probation for a period of 11 months and ordered to pay \$500 in fines as to Count 1. He was ordered to pay \$500 in fines as to Count 2. Based on a petition for Post Conviction as to Count 1, on May 11, 2001, the court granted the motion, and the State entered a "Nolle Prose" on the case.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant remains convicted, for immigration purposes, of Count 1 above.

The applicant is ineligible for TPS because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction (No. 4 above). Section 244(c)(1)(A)(iii) of the Act. Additionally, the applicant has failed to provide the final court dispositions of his arrests listed in Nos. 1, 2, and 3 above; therefore, he is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that the record of proceeding contains a Notice to Appear (Form I-862), issued on November 15, 2000, in Baltimore, Maryland (File No. [REDACTED] based on the applicant's entry into the United States without inspection, and based on his conviction of possession of a controlled dangerous substance, paraphernalia (No. 4 above).

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.