

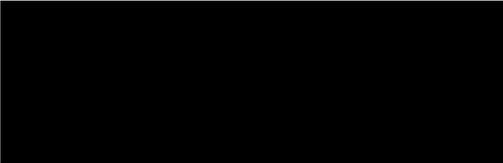


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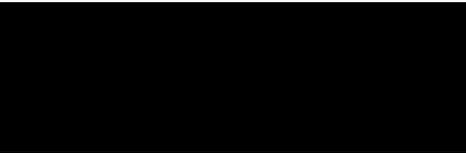


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 29 2005
[EAC 01 201 51463]

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:



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 submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court 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 Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on March 20, 1999, in Riverhead, New York, for driving while intoxicated, and that the applicant was subsequently convicted of this offense.

On October 9, 2002, the applicant was requested to submit the final court disposition of every charge against him, including the charge listed above. The director noted that in response, the applicant submitted evidence establishing his residence in the United States; however, he failed to submit the requested final court disposition of the charge, or of any charges, and denied the application on May 9, 2003.

On appeal, counsel submits a court document indicating the following:

- (1) On March 21, 1999, the applicant, under the name of [REDACTED] was arrested and charged with Count 1, driving while intoxicated (.17 percent blood alcohol level), VTL 1192.2 & 3; and Count 2, unlicensed driver, VTL 509.1. On July 26, 1999, in the Local Criminal Court, Town of Riverhead, County of Suffolk, New York, Docket No. [REDACTED] Count 1 was subsequently reduced to driving while ability impaired, VTL 1192.1, a misdemeanor, and the applicant was convicted of this reduced charge. He was ordered to pay \$330 in fines and costs, complete 49 hours of community service, and his license was suspended for 90 days. The final disposition as to Count 2 shows “C1” on July 26, 1999.

The applicant failed to identify the disposition of Count 2, even though the director, on May 9, 2003, advised the applicant that the “charge and disposition must be specifically identified (not just numeric citations or codes).”

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). Accordingly, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that the record of proceeding does not contain the applicant's birth certificate to establish his nationality.

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.