



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 07 2005

[WAC 03 263 51967]

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, California 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 failed to establish he was eligible for late registration.

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on September 5, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 1, 2004.

On appeal, the applicant states that he didn't register for TPS during the initial registration period because he was "afraid" and because he didn't have the money to pay the application fees at that time. The applicant's statements are acknowledged; however, these statements does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

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.

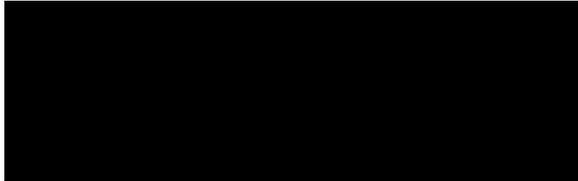
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



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

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M 1

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 07 2005**
[WAC 02 158 53220]

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:
[REDACTED]

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, California 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 Mexico 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 was convicted of two misdemeanors committed in the United States.

On appeal, counsel submits a brief.

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

misdeemeanors 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 record reveals the following offenses:

- (1) On February 9, 2000, in the Superior Court of California, County of Santa Clara, the applicant was indicted for Count 1, petty theft of personal property, 484-488 PC, a misdemeanor; Count 2, contributing to the delinquency of a minor, 272 PC, a misdemeanor; and Count 3, contributing to the delinquency of a minor, 272 PC, a misdemeanor. The Misdemeanor Docket for the Municipal Court of California, Santa Clara County Judicial District, indicates: "Plea of guilty/nolo contendere/change of plea: 6-1-00 See minutes." The Docket further indicates that on July 7, 2000, the court revoked the applicant's probation and a bench warrant for the applicant's arrest was issued. The referenced "minutes," are not contained in the record of proceeding. However, the applicant submitted the Santa Clara County Criminal History Review indicating that the applicant was convicted of Counts 1 and 2, and that Count 3 was dismissed.
- (2) The Federal Bureau of Investigation report shows that on January 11, 2000, in Sunnyvale, California, the applicant was arrested for burglary, first degree. The final disposition of this arrest is not contained in the record although the applicant was requested on October 3, 2002, to submit the certified court disposition of each arrest.

On appeal, counsel states that the applicant was charged with three crimes, that one was dismissed, and that she was convicted of two (No. 1 above). He further states that while the concept of a single scheme of misconduct normally applies to grounds of removability under section 237(a)(2)(A)(ii) as two crimes of moral turpitude, the notion of a single scheme should also apply to section 244(c)(2)(B) for a TPS applicant. Counsel asserts that the two crimes should be considered a single scheme or common plan because the applicant, in this case, stole something from a merchant while with a minor child, and that she was charged

and convicted of two crimes but both crimes occurred at the same time. Counsel further asserts that, "applying the well establishing concept of a single scheme to this case means that [REDACTED] has been convicted on two misdemeanors but from a single scheme and like the situation under 237(a)(b)(ii) [sic] should be considered only one conviction."

While the determination of whether the applicant's crimes arouse "out of a single scheme of criminal misconduct" may be relevant to her removability under section 237 of the Act, this determination has no bearing on her eligibility for TPS or her admissibility under section 212(a) of the Act. Furthermore, that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with three separate counts and she was convicted of two separate offenses. *Black's Law Dictionary*, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense; therefore, the applicant has been convicted of two separate and distinct offenses. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

The applicant is ineligible for TPS due to her record of at least two misdemeanor convictions and because she failed to provide the final court disposition of her arrest detailed in No. 2 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 for this reason will be affirmed.

Beyond the decision of the director, the record shows that the applicant is a native and citizen of Mexico. The record contains the applicant's marriage certificate indicating that she is married to a native and citizen of El Salvador. Pursuant 8 C.F.R. § 244.2, a spouse or child of an alien currently eligible to be a TPS registrant is eligible for TPS if such alien establishes that he or she is a national of a foreign state designated by the Attorney General (now, the Secretary of the Department of Homeland Security). The applicant, in this case, is a native and citizen of Mexico and her country has never been designated under section 244 of the Act. Therefore, she does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act.

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.