

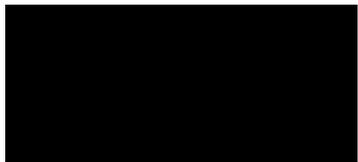


U.S. Citizenship
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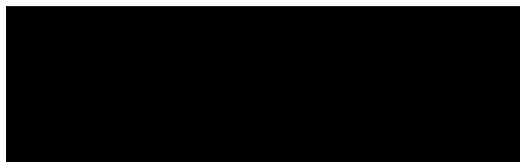
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FILE: [REDACTED]
[WAC 02 044 51310]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 02 2005

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: 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. The application 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 denied the application after determining that the applicant had abandoned his application.

On appeal, the applicant submits a statement and additional evidence.

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) On February 17, 2002, the applicant was arrested in Yuma, Arizona, under the name [REDACTED] and charged with domestic assault in violation of section 131203(a), a Class 1 misdemeanor. (Docket # [REDACTED])
- (2) On August 7, 2002, the applicant was arrested in Salinas, California under the name [REDACTED] and charged with one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; one charge of driving without a license in violation of section 12500(a) VC, a misdemeanor; one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or higher in violation of section 23152(b) VC, a misdemeanor; and one count of failure to provide evidence of financial responsibility in violation of section 16028(a) VC, an infraction. (Docket # [REDACTED])

On November 20, 2003, the applicant was requested to provide evidence of nationality, evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames, and certified copies of the final court dispositions of the arrests listed above.

The director denied the application on February 28, 2004, stating that the applicant did not provide the requested evidence in response to the Notice of Intent to Deny. However, the applicant did respond to the notice. His response was received at the California Service Center on February 13, 2004. In response to the notice, the applicant provided proof of identity and nationality, evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames, and the final court disposition of offense (1) detailed above. The court document indicates that the applicant pled guilty to the charge of domestic violence, a Class 1 misdemeanor, in the Yuma City Municipal Court in Yuma, Arizona on March 12, 2002. The applicant did not provide the final court disposition of the offense in No. (2) above in response to the Notice of Intent to Deny.

On appeal, the applicant provides the final court disposition of his arrest on August 7, 2002, detailed in No. (2) above. According to this document, the applicant pled guilty on September 11, 2002, in the Superior Court of California, County of Monterey, to driving under the influence of alcohol and driving without a license, both misdemeanors. The other two charges, driving with a blood alcohol content of 0.08% or higher and failure to provide proof of financial responsibility at the scene of an accident, were dismissed in the furtherance of justice.

The director incorrectly denied the application for abandonment due to failure to respond to the Notice of Intent to Deny. Nevertheless, the applicant has now provided evidence establishing that he has been convicted of three misdemeanors. Therefore, he is ineligible for TPS under 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the application has failed to submit 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.