

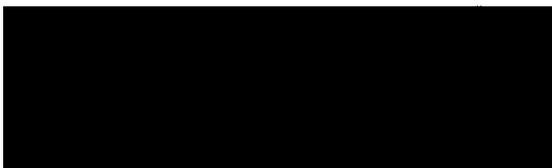


U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 01 197 52816]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 17 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont 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 initially denied the application on June 25, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On August 4, 2003, the applicant filed a motion to reopen the matter.

The director dismissed the motion on February 25, 2004, because it was not timely filed.

The director subsequently reopened the matter and denied the application again on July 31, 2004, because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits 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.
8 C.F.R. § 244.1.

The record reveals the applicant was arrested in Albany, New York, and charged with "OFFERING FALSE INSTR FOR FILING 1ST 2699."

Pursuant to a letter dated May 19, 2004, the applicant was requested to submit the final court disposition for the charge detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 31, 2004.

On appeal, counsel for the applicant submits the following:

1. a copy of a Revenue Receipt and Transmittal Form from the Albany County Supreme and County Courts, Albany, New York, indicating that the applicant paid a Crime Victim Assistance Fee of \$10.00 and a PL Misdemeanor Surcharge of \$110.00 on September 27, 2004 (Case Number [REDACTED]); and,

2. a copy of a Summons & Notice form from the County Court, County of Albany, State of New York, summoning the applicant to appear in the Albany County Court, Albany, New York, on September 27, 2004, to pay the mandatory surcharge of \$110.00 and a crime victim's assistance fee of \$10.00.

Although the two documents submitted on appeal appear to indicate the applicant has been convicted of a misdemeanor, neither of these documents contains any information linking it to the offense listed above. Neither document reflects the date of arrest, the charge, or the final court disposition of the charge. These documents, therefore, cannot be accepted as final disposition documents.

The applicant has failed, both in response to the Notice of Intent to Deny and on appeal, to provide any evidence revealing the final court disposition of his arrest detailed 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant was apprehended by the United States Border Patrol near Sarita, Texas, on March 23, 1997, after having entered the United States without inspection. The applicant was placed in removal proceedings. On January 13, 1998, an Immigration Judge in New York, New York, allowed the applicant to withdraw his requests for asylum and for withholding of removal and granted the applicant the privilege of voluntary departure from the United States on or before January 14, 1999, with an alternate order of removal if the applicant failed to depart in compliance with the grant of voluntary departure. There is no indication in the record that the applicant ever departed in compliance with the grant of voluntary departure.

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.