



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 18 2005

[EAC 01 187 54138]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits a brief and additional documentation.

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.

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 applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on April 20, 2001. At the time of filing his application, the applicant indicated that he had never been arrested. However, a criminal history check conducted in connection with that application revealed the following offenses, each occurring in Los Angeles, California:

- (1) On March 8, 1990, the applicant was arrested and charged with one count of grand theft of a credit card in violation of section 484(e)(4) PC, a felony; two counts of grand theft of property in violation of section 487(1) PC, a felony; one count of receiving known stolen property in violation of section 496(1) PC; and, one count of grand theft of a credit card with intent to defraud in violation of section 484(e)(3), for which he was sentenced to 36 months probation and 120 days in jail, suspended.
- (2) On October 30, 1990, the applicant was arrested and charged with one count of grand theft auto. There is no disposition of this charge contained in the record.

Pursuant to letters dated January 29, 2002, and June 6, 2002, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, counsel for the applicant provided a

statement from the applicant and photocopies of letters forwarded to the Santa Monica Municipal Court, Los Angeles Police Department, and Los Angeles Municipal Court, requesting certified copies of the applicant's docket sheets and/or police reports. No final court dispositions of the applicant's arrests were provided.

On September 2, 2003, the director denied the application for failure to provide the final court dispositions of his arrests.

On appeal, counsel for the applicant states that the applicant lived for a short time in California, during which he was involved in two incidents that did not result in any criminal charges. In support of the appeal, counsel submits a letter from the Superior Court of Santa Monica, California, indicating that the court had no record of the applicant in its criminal indexes for the years 1986 through 2001. Counsel also submits a letter from the Los Angeles Police Department indicating that it is unable to provide the applicant with a copy of, or information contained in, the applicant's arrest report because the arrest occurred in excess of six months prior to the date of the request.

There is no evidence that the Superior Court of Santa Monica, California, would have had jurisdiction over the applicant's arrests. The applicant has failed to provide any evidence revealing the final court disposition of his arrests in Los Angeles, California, 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 will be affirmed.

It is noted that the applicant was previously ordered deported from the United States by an immigration judge in 1990.

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.