



U.S. Citizenship
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Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 30 2005

[EAC 02 276 53053]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied 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 denied the application because she found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel for the applicant states that the applicant is a national and citizen of El Salvador. According to counsel, the applicant was never arrested by the New Jersey Police.

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.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On June 7, 1996, the applicant was arrested by the Newark Police Department for fraud and misrepresentation.

Pursuant to a letter dated August 8, 2003, the applicant was requested to submit the final court disposition for the charge detailed above. In response, the applicant submitted a statement in which she stated that she did not appear before a judge when arrested, and was only fingerprinted and sent back to her country. According to the applicant, she was never given any documentation from the court clerk or the police department.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on February 25, 2004.

On appeal, counsel for the applicant states that the applicant is a national and citizen from El Salvador and did not know what to do when she received the notice requesting the final court disposition for her arrest. According to counsel, the applicant went to the Newark Police Department when she received the notice, but was told that she could not be issued any document because she was not a New Jersey resident. The applicant also submits a personal statement in which she states that she was detained at Newark International Airport on June 7, 1996 by Immigration and Naturalization Services (INS) now CIS. The applicant states that she was informed that her visa was not good, and she was taken by an immigration officer and waited until the next day when she was returned to her county. The applicant says that she does not remember leaving the airport to be taken to a police station. The applicant also submits a document from the Nassau County Police Department, which indicates that no criminal record exists in the applicant's name.

It appears that the applicant was not, in fact arrested by the Newark Police Department. The record indicates, and the applicant claims that she was fingerprinted and photographed by CIS. However, there is nothing in the record to show she was actually arrested by the local police department. Consequently, there would be no final court disposition the applicant could provide. The applicant appears to have overcome this basis of the director's decision.

Beyond the decision of the director, however, it is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence or continuous physical presence during the requisite time periods. Therefore, the application must be denied for these reasons.

It is also noted that the applicant indicated on her application that she was a citizen of El Salvador. However, when she was arrested for using a fraudulent visa to enter the United States, she stated under oath that she was born in San Pedro, Guatemala. The applicant did not claim El Salvadoran nationality until filing for her TPS application. The applicant claimed to be a national and citizen of Guatemala when she attempted to enter the United States. The nationality the applicant claimed and/or established at the time she first came into contact with the Service (now CIS) was that of Guatemalan. Therefore, this citizenship must be regarded as her operative nationality during these proceedings. Guatemala is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. The applicant has not demonstrated that her "operative nationality" is that of a TPS-designated country. Therefore, the application must be denied for this additional reason as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.