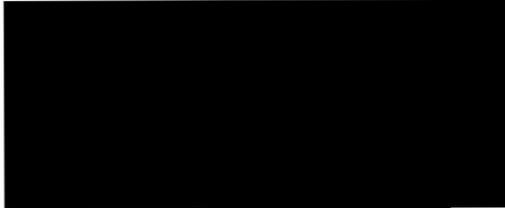




U.S. Citizenship
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DEC 07 2008

FILE: [REDACTED]
[EAC 01 193 51216]

Office: VERMONT SERVICE CENTER

Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant is stated 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 determined that the applicant failed to comply with his request to submit final court dispositions of all his arrests. The director, therefore, denied the application.

On August 20, 2002, the director issued a Form I-797, Notice of Action, to the applicant requesting additional evidence necessary for the processing of his application. The director noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on March 22, 1992, he was arrested for assault and breaking and entering and on January 15, 1996, the applicant was arrested for strong-arm robbery by the Herndon Police Department in Virginia. The director requested that the applicant furnish the final court dispositions for these charges. Additionally, the director requested that the applicant submit evidence to show that he is a citizen or national of El Salvador. The director indicated that a copy of his birth certificate issued by the appropriate civil authority was one of the documents that would satisfy this requirement.

On appeal, counsel submits a letter from the Deputy Clerk of the 19th Judicial District of Virginia of the Fairfax County General District Court in Fairfax, Virginia, to show that the applicant attempted to obtain the court dispositions for the two 1992 charges. Counsel also correctly indicates that the arrests for assault and breaking and entering are shown as having been dismissed on the FBI results report referenced by the director. Counsel also submits the requested court document showing the disposition of his January 15, 1996 arrest.

It is determined that the record substantiates counsel's argument that the applicant was not convicted of any crime based on his March 22, 1992, arrest.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

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 shows that on July 22, 1996, in the Circuit Court of Fairfax County, Criminal No. 89909, the applicant's indictment for robbery was amended to assault and battery, a misdemeanor. His sentence of twelve months in jail was suspended conditioned upon his good behavior and he was placed on two years probation, ordered to pay court costs and \$1,000 restitution. On July 16, 1998, his sentence was reconsidered, he was ordered to serve three hundred sixty-four days in jail and that sentence was suspended conditioned upon his good behavior. The term of his probation was extended until restitution and court costs were paid in full.

The record, in this case, shows that the applicant was convicted of only one misdemeanor offense. As the applicant is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act, this finding of the director will be withdrawn.

It is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a)(1).

Therefore, the matter will be remanded and the director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action.