

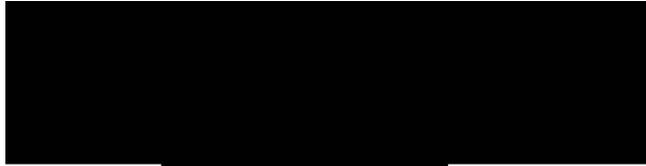
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE:

[EAC 02 005 50108]

OFFICE: Vermont Service Center

DATE:

JUL 20 2006

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 he determined that the applicant was ineligible for TPS because the applicant had been convicted of felony possession of a controlled substance committed in the United States.

On appeal, counsel, on behalf of the applicant, submits evidence in support of the applicant's eligibility for TPS.

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, 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.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On November 8, 1997, the applicant was arrested by the Alexandria, Virginia Police Department and charged with “Concealed Weapon”;
- (2) On October 30, 1998, the applicant was arrested by the Alexandria, Virginia Police Department and charged with “Poss W/Int to Dist Cocaine”; and,
- (3) On August 7, 1999, the applicant was arrested in Maryland and charged with “Theft Under \$300”, “Trespassing”, and “Disorderly Conduct”, under the alias of

Pursuant to a notice of intent to deny his application for TPS dated March 30, 2004, the applicant was requested to submit the final court disposition for the charges as detailed above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charge was classified as a felony or misdemeanor. Also, the applicant was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001.

The applicant responded to the director's request and submitted the following documents:

- (4) A copy of the applicant's request for the Expungement of Records and General Waiver and Release with regards to his arrest on August 7, 1999;
- (5) True test copies printouts from the District Court of Maryland's Criminal System Inquiry reflecting that the charges on August 7, 1999, for "Trespass-Posted Property", "Theft: Less \$300 Value", and "Disorderly Conduct" were not prosecuted;
- (6) A true test copy of the Warrant of Arrest and charging document from the Circuit court of the City of Alexandria, Virginia, reflecting that the applicant (alias: [REDACTED]) was charged/indicted with felony possession of cocaine under Virginia Code § 18.2-250 (Possession of controlled substances unlawful);
- (7) A true test copy of the Warrant of Arrest from the Alexandria General District Court, reflecting that the applicant pled guilty to § 18.2-308 Virginia Code (carrying concealed weapons) and paid a fine of \$260; and,
- (8) A true test copy of the Warrant of Arrest from the Alexandria General District Court reflecting that the applicant pled guilty to § 19.2-128 Virginia Code. (failure to appear) and paid a fine of \$330.

The director determined that the applicant was ineligible for TPS because the applicant committed a felony involving controlled substance within the United States. Therefore, the director denied the application on April 19, 2005.

On appeal, counsel states that the evidence submitted by the applicant does not support the denial. Counsel also states that court records for the applicant's arrest on November 8, 1997, indicates a misdemeanor conviction, and court record for his arrest on October 30, 1998, does not show a conviction.

The record of proceedings also contains a true test copy of the General District Court Case, as noted in No. 6 above, which was handed over to the Grand Jury. The record also reflects that on December 7, 1998, the Grand Jury in the Circuit Court of the City of Alexandria, Virginia charged that the applicant did "unlawfully and feloniously possess cocaine, a scheduled II controlled substance" under Virginia Code § 18.2-250, which is a Class 5 felony that is punishable by a term of imprisonment of not less than one year. In addition, the record contains the Grand Jury Order reflecting that the applicant "pleaded guilty to Possession of Cocaine as charged in the indictment" and the jury found the applicant guilty of Possession of Cocaine as charge in the indictment. Further, the applicant was sentenced to 12 months in the Alexandria City Jail.

The court dispositions contained in the record also reflect that the applicant has also been convicted of two misdemeanors within the United States. Specifically, the applicant was convicted of §18.2-308 (carrying concealed weapons), Class 1 misdemeanor, as detailed in No. 7 above; and § 19.2-128. (failure to appear), Class 1 misdemeanor, as detailed in 8 above.

The applicant is not eligible for temporary protected status because he has been convicted of a felony and two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

The applicant is also inadmissible to the United States because of his conviction of Possession of Cocaine pursuant to Section 212(a)(2)(A)(i)(II) of the Act. Thus, the applicant remains ineligible for TPS based on these reasons as well.

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.