



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

MI

[REDACTED]

FILE: [REDACTED]
[EAC 02 203 51195]

Office: VERMONT SERVICE CENTER

Date: APR 02 2007

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 Vermont Service Center. 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 appeal will be rejected.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, during the initial registration period. The director denied that application on May 16, 2002, after determining that the applicant had failed to adequately respond to a notice dated December 21, 2001 by not explaining if a charge he was convicted of was a felony or a misdemeanor.

The applicant did not appeal the director's decision.

The applicant filed the current Form I-821, on June 7, 2002, and indicated that he was filing his first application to register for TPS.

The director denied this second application because the applicant had failed to respond to a Notice of Intent to Deny dated June 6, 2003.

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 reflects the following offenses:

- (1) On July 11, 1996, the applicant was convicted of assault, a misdemeanor, by a Judge of the Fairfax County Juvenile and Domestic Relations District Court in Virginia.
- (2) On July 29, 1997, the applicant was convicted of "fail to stop at the scene of an accident that resulted in damage to an attended vehicle or property and report the same, address, driver's license number, and vehicle registration number of the accused," (hit and run), a misdemeanor, by a Judge of the Fairfax County General District Court in Virginia.
- (3) On December 18, 1997, the applicant was convicted of contempt of court, a misdemeanor, by a Judge of the Fairfax County Juvenile and Domestic Relations District Court in Virginia.

The applicant is ineligible for TPS due to his three misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

It is noted that on May 21, 2004, the applicant was deported from the United States.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal should have been filed on or before September 10, 2003. The appeal was received at the Vermont Service Center on October 3, 2003.

An alien applying for TPS has the burden of proving that he or she is eligible under the provisions of section 244 of the Act.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.