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U.S. Citizenship
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DEC 06 2007

[REDACTED]

FILE:

[REDACTED]
[EAC 02 276 52760]

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.

for 
for 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 applicant is a native and citizen of El Salvador 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, the applicant states that he provided his attorney with documents regarding the hearings when he had to appear in court. He asserts that he did not know he had to provide court dispositions. The applicant furnishes copies of the requested court dispositions.

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.

The record reveals the following offenses:

- (1) On February 6, 1998, the Rockville County, Maryland County Police Department arrested the applicant and charged him with a violation of § 3-302 of the Maryland Code, “Assault-first degree”, a felony, and a violation of § 3-203 of the Maryland Code, “Assault-second degree”, a misdemeanor.
- (2) On December 16, 1999, the Riverdale, Maryland Capital Park Police arrested the applicant and charged him with a violation of § 9-409, “Resisting Arrest”, a misdemeanor.

Pursuant to a letter dated April 6, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to provide evidence that indicated whether each conviction was a felony or misdemeanor.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 30, 2003.

On appeal, the applicant states that he did not know he had to provide court dispositions. The applicant provides the requested court dispositions. The court dispositions indicate that on April 9, 1998, the applicant was convicted of "Assault-second degree", and on June 16, 2000, the applicant was convicted of resisting arrest. The applicant is therefore ineligible for TPS because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the director's decision, it is noted that the record indicates the following offenses:

3. On September 2, 1999, the applicant was convicted of "Driving Under the Influence of Alcohol" and "Failure to Drive Right of Center."
4. On May 12, 2000, the applicant was convicted of "Driving Under the Influence of Alcohol or Drugs or Drug & Alcohol or Controlled Dangerous Substance" and "Driver Fail to Stop at Steady Circular Red Signal or at Steady Red Arrow Signal" and "Resisting Arrest." The applicant also pled "Nolle Prosequi" to "Driving Vehicle on Highway at Speed Exceeding Limit" and "Assault-Second Degree."

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.