



U.S. Citizenship  
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Services

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JAN 03 2007

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[consolidated herein]

[EAC 01 167 53312]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** Approval of the application was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 withdrew approval of the applicant's TPS because he found that the applicant had failed to respond to a request for evidence regarding his criminal record.

On appeal, counsel for the applicant submits a brief statement and an affidavit from the applicant.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on April 2, 2001. That application was approved on March 26, 2002.

As a result of being fingerprinted in connection with an application for extension of his TPS, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested and charged with the following offenses:

- (1) Illegal Entry into the United States, in violation of 8 U.S.C 1325, in Del Rio, Texas on January 29, 1998; and,
- (2) Disorderly Conduct/Creating a Dangerous Act, in Mineola, New York, on August 30, 2003.

On August 30, 2004, the applicant was requested to submit the final court dispositions of his arrests, specifically identifying the charges and dispositions. Furthermore, the applicant was requested submit evidence showing whether any charge for which he was convicted qualified as a felony or misdemeanor offense. The record reflects that the applicant failed to respond to the request. Therefore, on February 4, 2005, the director withdrew the approval of the applicant's TPS.

On appeal, counsel submits an affidavit from the applicant stating that, to the best of his knowledge, he has never been convicted of any misdemeanor offenses in the United States.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw the approval of the applicant's TPS will be affirmed.

It is noted that the applicant was previously ordered removed from the United States to El Salvador by an Immigration Judge on July 14, 1998.

It is further noted that at the time of filing his initial Form I-821, the applicant indicated that he was married in Costa Rica on October 18, 1984, and that his three children all reside in Costa Rica. Furthermore, when filing an application to renew his temporary treatment benefits on October 3, 2003, the applicant indicated that his spouse resides in Costa Rica. In any future proceedings before CIS, the applicant should submit evidence to establish that he is not, in fact, also a national of Costa Rica.<sup>1</sup>

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.

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<sup>1</sup> The General Counsel, in GENC\O Op. 92-34 (August 7, 1992), concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The General Counsel explains that "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. See id. 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254(b)(1)(a), (b), and (c)."