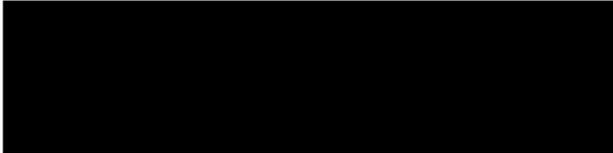




U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 07 2007

[EAC 02 066 51783]

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: The application was denied, reopened and again 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 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 director denied the application because the applicant failed to submit a final court disposition stemming from his arrest in Mineola, New York.

On appeal, the applicant claims his eligibility for TPS.

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 record reveals the following offenses:

1. The applicant was arrested on February 13, 1999, by the Hempstead Police Department, Hempstead, New York, and charged with assault with intent to cause physical injury with a weapon, a class D violent felony. Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
2. The applicant was arrested on April 11, 1999, by officers of the Nassau County Police Department, New York, and charged with assault in the 2nd degree, a felony; criminal mischief in the 4th degree, a misdemeanor; and possession of a dangerous weapon in

the 4th degree. (Case # SCI-1336N-99). The applicant submitted a copy of the final court disposition that showed he was found guilty of criminal mischief in the 4th degree, a misdemeanor, on June 14, 1999.

3. The applicant was arrested on November 17, 1999, by the Islip Police Department, New York, and charged with possession of marijuana, a class B misdemeanor. Despite the director's request, the applicant has failed to provide the final court disposition for this offense.

The director issued a notice of intent to deny on August 13, 2004, requesting that the applicant provide final court dispositions stemming from his criminal arrests, based upon the Federal Bureau of Investigation's (FBI) fingerprint results report. The director denied the TPS application on February 17, 2005, after determining that the applicant had failed to respond to the request for final court dispositions. It is noted however, that the record of proceeding shows that the applicant responded to the director's request by providing a copy of a final court disposition stemming from his April 11, 1999, arrest.

Although the applicant has provided a final court disposition with respect to his April 11, 1999, arrest, he has failed to provide any evidence revealing the final court disposition of his arrests detailed in numbers 1 and 3 above. The applicant is ineligible for temporary protected status 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 will be affirmed.

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.