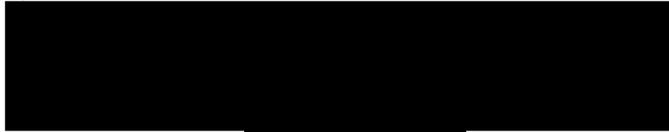


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U.S. Citizenship
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Services

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SEP 14 2007

FILE:

[EAC 01 250 53719]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Director, Vermont Service Center (VSC), withdrew the approval of the application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (I.N.A. or the Act), 8 U.S.C. § 1254.

The director withdrew the approval of the application because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant asks that his application be approved as a matter of discretion, as he feels remorse for his actions.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 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 TPS under this section if the Secretary of the Department of Homeland Security (DHS) 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 reflects that on December 4, 2003, the applicant was convicted, in the North Hampton District Court, North Hampton, Massachusetts, of the following offenses,:

1. two counts of assault or assault and battery, in violation of Massachusetts General Laws, chapter 265, § 13A(a);
2. one count of wanton or malicious destruction of property under \$250, in violation of Massachusetts General Laws, chapter 266, § 127; and,
3. one count of misdemeanor breaking and entering, in violation of Massachusetts General Laws, chapter 266, § 16A.

A conviction under Massachusetts General Law, 265 § 13A is a level 2 misdemeanor, and can result in up to two and a half years imprisonment. A conviction under Massachusetts General Law, 266 § 127 is a level 2 misdemeanor, and can result in a term of imprisonment of no more than two and a half months. A conviction under Massachusetts General Law, 266 § 16A, is a level 2 misdemeanor, and can result in a term of no more than six months imprisonment. Under the Act, these four convictions are all misdemeanors, as they are crimes punishable by imprisonment for a maximum term of more than 5 days.

The applicant asks that his application be approved as a matter of discretion. The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions detailed above. There is no discretionary waiver available to the applicant under the Act or the regulations.



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An alien applying for TPS 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 that burden.

ORDER: The appeal is dismissed.