



U.S. Citizenship
and Immigration
Services

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FILE:

[SPM 05 131 00031]

Office: ST. PAUL FIELD OFFICE

Date:

FEB 26 2008

INRE:

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, St. Paul Field Office. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director found that the applicant was not eligible for TPS under section 244(c)(2)(B)(i) due to his conviction of any felony or two or more misdemeanors committed in the United States. The director denied the application on June 13, 2006. The applicant filed the current appeal from that denial decision on July 12, 2006.

On appeal, the applicant submits a statement and additional evidence.

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 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.

As a result of being fingerprinted in connection with this application, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating the following:

1. On May 23, 2002, the applicant was arrested in Somerset, Pennsylvania, and charged with Simple Possession of Marijuana, and Receiving Stolen Property.
2. On February 21, 2002, the applicant was arrested in Brooklyn Park, Minnesota, and charged with Interfering With a 911 Call, and Domestic Assault.

On January 12, 2006, the district director requested the applicant to submit certified court dispositions of these arrests. Based on the applicant's response received on April 5, 2006, the district director concluded that the applicant had been convicted of two misdemeanors in the United States and denied his TPS application.

On appeal, the applicant submits additional evidence of the final court dispositions related to his two arrests. A review of the evidence submitted reveals that the charges of Simple Possession of Marijuana, and Receiving Stolen Property were dismissed on May 31, 2002 by the District Judge in Somerset, Pennsylvania, in return for pleading guilty to disorderly conduct, a misdemeanor. The evidence also indicates that the charge of Interfering With a 911 Call was dismissed on May 23, 2005. The charge of Domestic Assault, with a plea of not guilty, was dismissed on May 23, 2006, after the applicant successfully completed his probation and attended anger management classes.

It is concluded that the applicant has only been convicted of only one misdemeanor offense - a misdemeanor conviction for Disorderly Conduct, as detailed above. Therefore, he is not ineligible for TPS under 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility. Therefore, the district director's decision will be withdrawn and the appeal will be sustained.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained. The director's decision, dated June 13, 2006, is withdrawn, and the application is approved as of September 30, 2007.