

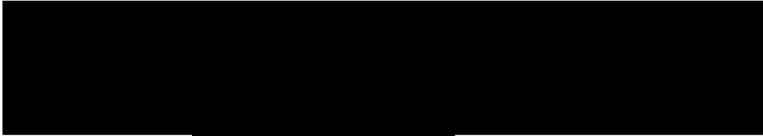


U.S. Citizenship
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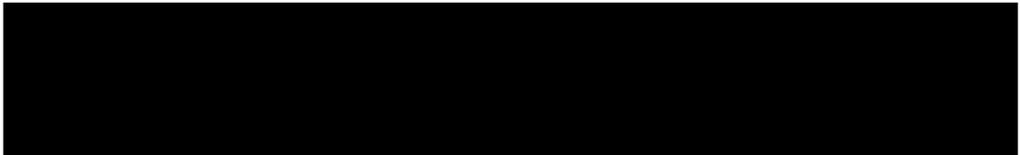
OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 16 2008**

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application for Temporary Protected Status. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 applicant filed a Form I-821, Application for Temporary Protected Status, on March 21, 2001 (SRC 01 151 65895), which the Director, Texas Service Center, denied for abandonment on September 2, 2004, after the applicant failed to appear for fingerprints. On May 4, 2005, the applicant filed a Form I-821 application for re-registration, which the Director, California Service Center, denied on August 2, 2007, because the applicant's initial application for TPS had not been approved. On an appeal of this decision, the AAO *sua sponte* reopened the applicant's initial TPS application, finding that the applicant had subsequently appeared for his fingerprints. The AAO remanded both applications to the Director, California Service Center, for further consideration, as the fingerprint results from the Federal Bureau of Investigation revealed that the applicant had a criminal record that could make him ineligible for TPS.

On remand, the director denied the applicant's initial application because he found the applicant had been convicted of at least two misdemeanors and was therefore ineligible for TPS.

On appeal, counsel asserts that the applicant is a person of good moral character, and that the three charges happened on the same day.

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).

The regulation at 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 that on June 14, 2005, the applicant was convicted in the State Court of Cobb County, Georgia, of false statements, driving with an unlawful alcohol content, and failing to perform his statutory

duty upon striking an unattended vehicle. These offenses are classified as misdemeanors under Georgia law. He was sentenced to 12 months in the Cobb County Jail and ordered to pay a \$500 fine.

On appeal, the applicant submits character letters and letters of recommendation from friends and co-workers. However, the applicant does not dispute that he has been convicted of three misdemeanors.

Accordingly, the applicant is ineligible for TPS due to the misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.