

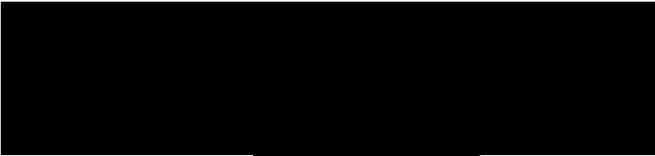


U.S. Citizenship
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FILE: [REDACTED]
[WAC 02 217 53440]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 30 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 office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 record reveals that the applicant filed a TPS application during the initial registration period on June 25, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 02 217 53440. The Director, California Service Center, denied that application on August 17, 2004, because the applicant failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that neither she nor the applicant received the notice of intent to deny requesting court documentation.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

- (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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On October 21, 2001, the applicant was arrested for “Speeding – 35 miles Over The Limit” a civic traffic violation¹, “No Valid Driver License,” a civil traffic violation”, and “Failure to Produce Evidence of Financial Responsibility,” a civil traffic violation.

¹ Punishable by civil penalty; no imprisonment

- (2) On January 28, 2002, the applicant was arrested for "Marijuana Violation," a felony, "Contributing to the Delinquency-Dependency of a Minor," a misdemeanor, and "Contributing to the delinquency-Dependency of a Minor."
- (3) On February 3, 2002, the applicant was arrested for "Marijuana Violation," and "Liquor to Minor by Licensee," a misdemeanor.
- (4) On May 27, 2002 the applicant was arrested for "Knowingly display Fictitious Plate," a misdemeanor, "Drive with License Suspended for FTA/FTP," a misdemeanor, and "Failure to Produce Evidence of Financial Responsibility," a civil traffic violation.
- (5) On July 23, 2003, the applicant was arrested for "Displaying Plate Suspended for Financial Responsibility," a civil traffic violation, "No Valid Driver License," a civil traffic violation, and "No Evidence of Financial Responsibility Within Vehicle," a civil traffic violation."
- (6) On September 24, 2003, the applicant was arrested for "Speeding-20 Miles Over Limit," a civil traffic violation, and "No valid Driver License," a civil traffic violation.

Pursuant to a letter dated March 20, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to respond; therefore the director denied the application on August 17, 2004.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on August 17, 2004.²

On appeal, the counsel for the applicant asserts that neither she nor the applicant received notice of a request for additional information requesting court documents. However, despite counsel's assertion, the notice was sent to the applicant's address of record and a copy of the notice were sent to counsel. There is nothing in the record to indicate that the notice was returned to CIS by the U.S. Postal Service as undeliverable. Therefore, the applicant's failure to receive the notice is of his own making. The applicant submits the requested court documentation. Based on the submitted court documents, the applicant was convicted of one misdemeanor and eight traffic violations. Civil traffic violations in the State of Arizona are not punishable by imprisonment, but only by civil penalty. Therefore, for immigration purposes, these violations are not misdemeanors as defined in 8 C.F.R. § 244.1

However the Federal Bureau of Investigation (FBI) results report dated June 19, 2006, reveals the following offenses:

² It is noted that a subsequently filed Form I-821 TPS re-registration application under WAC 03 054 511257 was also denied on August 17, 2004, because a previous TPS application had been denied.

- (7) On November 28, 2004, the applicant was arrested for "Violation of Promise to Appear," a misdemeanor.

The FBI report indicates that the applicant was subsequently convicted of this offense. However, the actual final court disposition for this arrest is not contained in the record. It is noted that the November 28, 2004 arrest occurred subsequent to the director's decision and the applicant's appeal. The applicant filed a TPS re-registration application and resubmitted the court documents on May 10, 2005. Therefore, the applicant had the opportunity at that point to submit the court disposition for the latter arrest. However, the applicant neither declared this arrest on the re-registration application, nor did he submit the related court disposition of this arrest or any other new or recent arrest(s).

The applicant has failed to provide the final court disposition of his November 28, 2004 arrest detailed 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 to deny the application will be affirmed.

It is noted that the applicant was removed from the United States to El Salvador on June 11, 2007, based on a final order of removal issued by an Immigration Judge on February 20, 2007.

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.