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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 02 2008

[REDACTED] consolidated]
[EAC 08 022 51885, appeal]
[EAC 03 004 51818]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO), 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 01 146 50185. The VSC Director denied that application on March 6, 2002, after determining that the applicant had failed to meet the continuous residence requirement for TPS.

The applicant filed the current Form I-821 on October 28, 2002 under receipt number EAC 03 004 51818 which was accepted as an initial application under the late registration provisions. The VSC Director denied the application because the applicant had failed to show evidence that he is a national or citizen of El Salvador. On appeal, the applicant submitted copies of his El Salvadoran passport and birth certificate along with an English translation which established that he is a citizen of El Salvador. However, the Chief of the AAO remanded the case because the applicant had failed to provide the court disposition for his May 26, 1996 arrest by the West New York Police Department for robbery and his September 22, 1998 arrests by the Union City Police Department for "Contempt."

On September 28, 2007, the VSC Director denied the October 28, 2002 application because the applicant had not provided court disposition for his arrests on May 26, 1996, September 22, 1998, May 7, 2003, June 17, 2004, October 21, 2004 and January 3, 2005.

On appeal, the applicant states he did not submit the evidence requested by the director's May 14, 2007 Notice of Intent to Deny because he was not able to obtain all the requested documents prior to the deadline. He submits orders of dispositions and additional documents for consideration.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

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 the following offenses:

- (1) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on May 26, 1996, he was arrested by the West New York Police Department in Hudson, New York, and charged with robbery. The charge was dismissed (no bill).
- (2) The FBI report shows that on September 22, 1998, he was arrested by the Union City Police Department in Hudson, New York, and charged with defiant trespassing and contempt of a court order. Both charges were dismissed.
- (3) On September 28, 1998, a Judge of the Superior Court of New Jersey Chancery Division-Family Part of Hudson County, New York, found that warrant issued based on a criminal complaint charging the defendant with contempt for willful violation of a domestic violence restraining order should be recalled because of a defective "T.R.O. no restraint given within the order." The Judge ordered that the Restraining Order should remain in full force and effect. (Docket No. [REDACTED]).
- (4) The FBI report shows that on May 7, 2003, he was arrested by the Jersey City Police Department and charged under the New Jersey Statute 2C:21-2.1D, as a person who knowingly possesses a document or other writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information., a misdemeanor. A copy of the record of the docket of the Jersey City Municipal Court of the City of Jersey City, New Jersey, dated October 12, 2007, provided by the Court Administrator reflects that the applicant was found guilty of that charge on July 15, 2003. (Docket # [REDACTED]).
- (5) The FBI report shows that on June 17, 2004, he was arrested by the Jersey City Police Department and charged with forgery and wrongful impersonating. A copy of the record of the docket of the Jersey City Municipal Court of the City of Jersey City, New Jersey, dated October 12, 2007, provided by the Court Administrator reflects that the applicant was found guilty of a violation of New Jersey Statute 2C:21-17(A(1)). A person is guilty of this offense if he impersonates another or assumes a false identity and does an act in such assumed character or false identity for the purpose of obtaining a benefit for himself or another or to injure or defraud another, a misdemeanor. A charge of a violation of "2C:28-7(b) as DP" was dismissed. (Docket # [REDACTED]).
- (6) The FBI report shows that on October 21, 2004, he was arrested by the Hoboken Police Department and charged with forgery. The case was dismissed.

(7) The FBI report shows that on January 3, 2005, he was arrested under the name [REDACTED] and charged with using false identification and possessing false identification. Both charges were dismissed.

(8) The FBI report shows that on April 24, 2005, he was arrested and charged with criminal mischief. The charge was dismissed.

The applicant is ineligible for TPS due to his two misdemeanor convictions, (Items # 4 and # 5 listed above). Section 244(c)(1)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application is affirmed.

It is noted that on August 9, 1993, the applicant, under the name [REDACTED] (then using an alias of [REDACTED]), was granted the opportunity to voluntarily leave the United States by September 9, 1993 by an immigration judge in Newark, New Jersey. The judge's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to El Salvador. The record does not show that he departed this country as ordered. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Acting District Director of the Newark, New Jersey, office of Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service) on September 10, 1993.

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.