

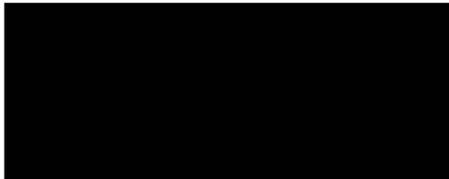


U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 08 344 70049]

Office: VERMONT SERVICE CENTER

Date: JUL 14 2009

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. 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 director denied the application because he found the applicant ineligible due to his two misdemeanor convictions and due to his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions.

On appeal, counsel asserts that the director did not establish that the applicant had received any form of punishments for one of his offenses and, therefore, had not established that the applicant had been “convicted” for immigration purposes.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled

substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On July 28, 1996, the applicant was arrested by the Miami-Dade [Florida] Police Department for driving under the influence. On July 29, 1996, the applicant pled guilty to this misdemeanor, was fined \$583.75, and was placed on probation for a period of six months. [REDACTED].
- (2) On April 27, 1999, the applicant was arrested by the Miami [Florida] Police Department for possession of marijuana. [REDACTED] Counsel concedes that the applicant pled guilty to this offense and it appears from the record that the applicant was convicted of this offense on April 28, 1999; however, the court records provided by the applicant are incomplete and do not reflect any mention of punishment.

Pursuant to a letter dated December 22, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. Specifically, the applicant and counsel were requested to provide “certified judgment and conviction documents from the court(s) that address...the final disposition (your sentence, probation, dismissal, etc.) of every charge against you.”

In response, the applicant provided court documentation including a certified “Clerk’s Certificate” confirming the conviction detailed in No. 1 above. The applicant also provided a “Complaint/Arrest Affidavit” and a “Jail Booking Record” reflecting the arrest in No. 2 above. However, despite the director’s very specific request for court records, the only court record provided for this offense is a printout of the result of a record search by the Miami-Dade Circuit and County Courts confirming that the applicant was convicted of the offense in No. 2 above. The applicant did not provide any contemporaneous evidence from the court detailing whether or not a punishment was ordered against the applicant as a result of his admitted guilty plea.

Counsel asserts on appeal that the director “did not prove 2 convictions exist under the INA.” However, the burden of proof lies with the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). In this case, the applicant has failed to provide requested evidence revealing the final court disposition of his arrest detailed in No. 2 above. The documentation submitted by the applicant does not show that no form of punishment was meted by the court; rather, it is incomplete in that it is devoid of any mention whatsoever of punishment. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 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.