



U.S. Citizenship
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DATE: FEB 13 2007

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IN RE:

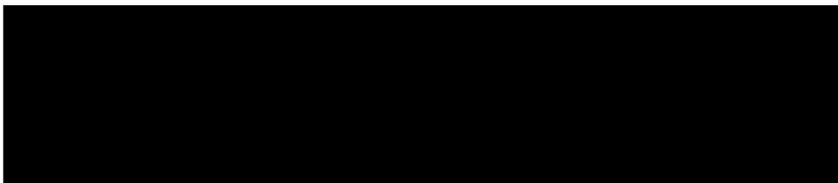
Applicant:



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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

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 director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court disposition. It is noted that the final court disposition of the applicant's arrest in the State of Maryland was previously furnished by the applicant's former counsel and contained in another file pertaining to this applicant [REDACTED]

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.

The record shows that on April 7, 2000, in the District Court of Maryland for Montgomery County, Case No. [REDACTED] (arrest date October 3, 1999), the applicant was convicted of assault in the second degree. He was sentenced to 180 days in jail, placed on probation for a period of 3 years, and ordered to pay \$155 in fines and costs.

Maryland Criminal Law § 3-203 states that "a person who violates this section is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$2,500 or both." While 8 C.F.R. § 244.1 defines a "felony" as a crime punishable for a term of more than one year, the regulation provides for an exception 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. In this case, assault in the second degree is defined by the State of Maryland as a misdemeanor and

the applicant was sentenced to probation for a period of 180 days. Therefore, the applicant qualifies under this exception pursuant to 8 C.F.R § 244.1, and the crime shall be treated as a misdemeanor for immigration purposes.

Based on these findings, the record, in this case, shows that the applicant was convicted of only one misdemeanor offense. Therefore, the applicant is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act.

The applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

It is noted that on November 23, 2001, the Immigration Judge, Baltimore, Maryland, administratively closed removal proceedings based upon the evidence submitted by previous counsel.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.