



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 02 2007

[SRC 01 258 54160]

[WAC 05 158 77998]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 director denied the initial TPS application (filed on August 16, 2001) because the applicant had failed to submit requested court documentation relating to his criminal record. Within the same denial decision, the director denied the re-registration application (filed on March 7, 2005) because the applicant had not demonstrated that he was eligible for TPS.

On appeal, counsel submits a statement and additional evidence.

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. 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.

In a Notice of Intent to Deny (NOID) dated July 22, 2006, the applicant was requested to submit: (1) a copy of his birth certificate; (2) a copy of his passport if he has one; (3) evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application; and (4) a copy of the final court dispositions of all of his arrests, including his arrests on May 27, 1983 and on July 4, 1986, as listed on the Federal Bureau of Investigation (FBI) fingerprint results report.

The director determined that the applicant, in response to the NOID, had failed to submit the final court disposition of his May 27, 1983 arrest, and denied the application on September 14, 2006.

The record reveals the following offenses:

- (1) On August 8, 1986, in the Criminal Court at Law No. 1, Harris County, Texas, Case No. [REDACTED] (arrest date July 4, 1986), the applicant was convicted of "driving while intoxicated," a misdemeanor. He was ordered to serve 3 days in jail, and to pay \$305 in fines and costs.
- (2) The FBI report indicates that on May 27, 1983, in Houston, Texas, the applicant (name used: [REDACTED]) was arrested for "driving while intoxicated." The final court disposition of this arrest is not contained in the record.

On appeal, counsel resubmits a copy of the court disposition of the applicant's July 4, 1989 arrest (No. 1 above). He asserts that the applicant could not submit any evidence for the May 27, 1983 offense (No. 2 above) because it does not exist, as detailed in the Certificate of Disposition from the Harris County District Clerk, Houston, Texas, indicating that a criminal search was conducted from 1976 to the present under the names of [REDACTED] and [REDACTED] and found one case, as detailed in

No. 1 above. Counsel asserts that if the applicant “had a previous DWI conviction from 1983, the 1986 offense would have been listed as a 2nd offense as per the Texas Penal Code.”

Counsel’s assertion on appeal is not persuasive. The FBI report indicates that the applicant was arrested for DWI on May 27, 1983, under the name of [REDACTED]. The court record does not show that a search was made under that name. Nor is there evidence that the applicant’s 1983 case was heard at the same court where the 1986 case was heard.

The applicant has failed to provide the final court disposition of his arrest detailed in No. 2 above. Therefore, 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 TPS application and the re-registration application will be affirmed.

The record contains a Warrant of Deportation, Form I-205, issued in Los Fresnos, Texas, on April 12, 1989, based on the final order of removal by an immigration judge on April 11, 1989. The applicant was subsequently removed from the United States on April 13, 1989.

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.