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U.S. Department of Justice

Immigration and Naturalization Service

Identifying
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invasion of person

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]
EAC 01 170 51280

Office: Vermont Service Center

Date: JAN 30 2003

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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. 1254a.

The director determined that the applicant failed to submit the court's final disposition of his arrests, as had been requested. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244.2, provide that an alien 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:
 - (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.

Pursuant to section 244(c)(2)(B)(i) and the related regulations in 8 C.F.R. 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The director noted that the Federal Bureau of Investigation (FBI) report contained in the record of proceeding reflects that the applicant was arrested in California for willful cruelty to a child. He was, therefore, requested to submit the court

disposition of this arrest. Because he failed to comply, the director denied the application.

On appeal, the applicant submits his criminal history record from the State of California, Department of Justice. The record reflects the following:

1. On August 20, 1990, in Los Angeles, California, the applicant was arrested and charged with shoplifting, in violation of section 484A of the California Penal Code (PC), a misdemeanor. The applicant was sentenced to 5 days in jail, imposition of sentence was suspended, and he was placed on probation for a period of 24 months.

2. On December 7, 1990, in Los Angeles, California, the applicant was arrested and charged with burglary, in violation of section 459 PC. The final disposition of this arrest is not reflected in the record.

3. On January 25, 1991, in Los Angeles, California, the applicant was arrested and charged with Count 1, burglary, in violation of section 459 PC; and Count 2, burglary-second degree, in violation of section 459 PC, a felony. The applicant was subsequently convicted of Count 2, and was sentenced to 365 days in jail. Imposition of sentence was suspended, and he was placed on probation for a period of 36 months. Count 1 was dismissed.

4. On January 26, 1992, in Los Angeles, California, the applicant was arrested and charged with inflicting injury upon a child, in violation of section 273D PC. The final disposition of this arrest is not reflected in the record. Nor did the applicant submit the arrest report and the court's final disposition, as had been requested by the director.

5. The record of proceeding also contains the docket information of the Circuit Court for Montgomery County, Maryland, Case No. 92328, reflecting that on June 29, 2001, the applicant entered a plea of guilty to Count 1, driving while intoxicated, a misdemeanor; and Count 2, driving without a license, a misdemeanor. The applicant was found guilty of both Counts 1 and 2. Fines were imposed in the amount of \$150 as to Count 1, and \$50 as to Count 2, and he was placed on supervised probation for a period of 6 months.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his one felony conviction (paragraph 3 above), and three misdemeanor convictions (paragraphs 1 and 5 above). There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.



The burden of proof is upon the applicant to establish that he 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.