

Identifying information deleted to
prevent disclosure of unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MM

FILE:



[WAC 01 174 50973]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 12 2005

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.

Robert P. Wiemann, Director
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 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 the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits a statement.

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. 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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On May 8, 2002, in San Bernardino County, California, Case No. [REDACTED] the applicant was arrested for embezzlement (over \$400), 503 PC, a felony. The applicant was subsequently charged with grand theft of property over \$400, 487(a) PC, a felony. On July 31, 2002, the felony charge was reduced to a misdemeanor pursuant to 17(b) PC. The applicant entered a plea of nolo contendere to the misdemeanor offense of 487(a) PC, and the applicant was found guilty of this offense. He was placed on probation for a period of 36 months, under the conditions that he pay \$163.78 in fines, costs and restitution, and serve 5 days in the county jail.
- (2) On March 24, 2003, in San Bernardino County, California, Case No. [REDACTED] the applicant was arrested for "under 21 driving with .05 percent blood alcohol level," 23140(a) VC, a misdemeanor. The case was dismissed on June 5, 2003.

The applicant furnished a letter from the City of Upland, California Police Department, dated October 14, 2003, indicating that their records reflect the following offenses:

- (3) Juvenile arrests on November 9, 1999 and March 23, 2000; advised to contact the San Bernardino County Juvenile Court for disposition.
- (4) Adult arrest on September 27, 2002, for unlicensed driver, 12500(a) VC; advised to contact the West Valley Superior Court for disposition.
- (5) Adult arrest on June 10, 2003, for suspended driver's license, 14601.1(a) VC; advised to contact the West Valley Superior Court for disposition

The applicant was requested on September 16, 2003, to provide police clearances and final court dispositions of all arrests. Because the applicant, in response, submitted the same evidence previously submitted, the director denied the application on January 13, 2004.

On appeal, counsel asserts that the applicant submitted all documentation that is required to prove eligibility for TPS.

The applicant, however, has failed to provide the final court dispositions of his arrests detailed in Nos. 3, 4, and 5 above. 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).

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.