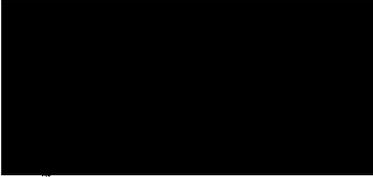




U.S. Citizenship  
and Immigration  
Services

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MM

FILE:



Office: TEXAS SERVICE CENTER

Date:

**AUG 15 2005**

[SRC 02 150 55049]

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: SELF-REPRESENTED

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, Texas 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 application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant states:

The reason for this appeal is due to the fact that I have not been successful in obtaining the court records of my personal record. The reason why I only sent a computerized and or internet copy on the previous package is due to the same situation. On this and or with this appeal, I have only submitted what I have on hand, hoping that before the new 30 days are over, I will be able to obtain a certified copy of such record from the court, since I have already requested over several weeks ago, and I still have not yet received such. I hope that you will accept the present appeal and then the evidences.

The applicant submits a copy of his passport, further documentation concerning his residence and presence in this country and a copy of a deferred adjudication judgment in his cause number [REDACTED] from a Dallas County, Texas judge issued January 28, 2003. He also submits an affidavit of fact in which he states that he has exhausted all of the channels in order to get a certified copy of his criminal record from the Manassas, Virginia Court along with evidence of his efforts to obtain this documentation.

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.

The Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on October 18, 1989 in Manassas, Virginia, for the unauthorized use of a vehicle, and that on November 2, 1989, the

applicant was convicted of this misdemeanor offense. Additionally, the report shows the applicant was arrested on June 11, 2002 in Irving, Texas, for assault causing bodily injury.

On August 5, 2002, the applicant was requested to submit the final court disposition of his arrest for unauthorized use of a vehicle on October 18, 1989 at Manassas, Virginia. Additionally, he was requested to submit final court dispositions for his arrest(s) on June 11, 2002 at Irving, Texas for assault causing bodily injury and for the unlawful use of a driver's license. The record reflects that the director was subsequently informed that the Irving, Texas cases were still pending. In response, the applicant furnished a letter from a Deputy Clerk of the Thirty-first Judicial District of Virginia in Manassas dated April 23, 2003 explaining that their office had no record of the applicant's case as criminal misdemeanor and traffic infraction cases were retained for ten years and then destroyed. The director determined that the applicant had failed to submit the requested final court disposition of the Manassas, Virginia charge, and denied the application on March 6, 2003.

On appeal, the applicant submits a court document from Texas indicating the following:

On January 28, 2003 in the Dallas County Criminal Court 10 (Cause No. [REDACTED]) the applicant pled "guilty/nolo contendere" to a misdemeanor charge of assault that was committed on June 11, 2002.

In addition to having failed to identify the disposition of his arrest in Manassas, Virginia, the applicant failed to identify the disposition of the second count of the Texas charge of the unlawful use of a driver's license asked for by the director in her August 5, 2002 request for evidence.

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). Accordingly, the director's decision to deny the application 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.