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**U.S. Citizenship
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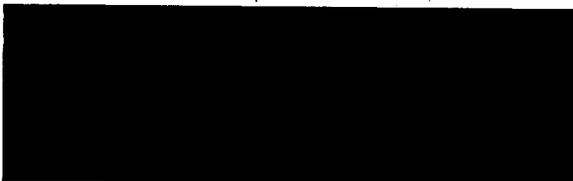


OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 17 2005**

[WAC 01 203 53358]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant 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. 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.
8 C.F.R. § 244.1.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The record reveals the following offenses:

- (1) On June 26, 1991, the applicant was arrested in Miami, Florida, and charged with petty larceny, a misdemeanor.
- (2) On October 17, 1991, the applicant was arrested in Miami, Florida, and charged with "trespassing after warning," in violation of section 810.09, a misdemeanor.

Pursuant to a letter dated December 5, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. He was also requested to provide evidence of identity and nationality

and evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted evidence of identity and nationality and evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. He also provided a letter dated December 20, 2003, from [REDACTED] stating that the applicant was attempting to obtain a copy of the final court disposition from the court in Dade County, Florida, but she anticipated that the requested documents would be not be available by January 5, 2004, the deadline indicated in the Notice of Intent to Deny.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 5, 2004.

On appeal, the applicant asserts that he is not ineligible for TPS on the basis of two misdemeanor convictions because he has only one misdemeanor conviction. He explains that he was detained by a Miami-Dade police officer on October 17, 1991, for trespassing on a church parking lot while waiting for day labor work, but they released him without filing any charges. The applicant provides the following:

1. a document from the Circuit and County Courts of the Eleventh Judicial Circuit of Florida indicating that the applicant was convicted of petty larceny on June 27, 1991. The document further indicates that adjudication of guilt was withheld and the applicant was sentenced to time served. (Case Number [REDACTED])
2. a document from the Circuit Criminal Division, Circuit Court of the Eleventh Judicial District of Florida In and For Dade County, indicating that the applicant failed to appear for his scheduled hearing on November 7, 1991, on the charge of trespassing. (Case Number [REDACTED])
3. a "Complaint/Arrest Affidavit" relating to the arrest of [REDACTED] on October 17, 1991, on the charge of trespassing.

It is noted that the applicant is incorrect in his assertion that he was not arrested and charged with trespassing after warning. The record contains a Florida criminal history record indicating that the applicant was arrested on October 17, 1991, on the charge of trespassing after warning, SID number [REDACTED]. To date, the applicant has not provided any evidence regarding the final disposition of this charge.

The applicant has failed to provide the final court disposition of his arrests detailed 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.