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**U.S. Citizenship  
and Immigration  
Services**

**MI**



FILE: [REDACTED]  
[EAC 02 165 51397]

OFFICE: VERMONT SERVICE CENTER

DATE: **DEC 05 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: 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.

*Cindy N. Gomez*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application 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 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

1. On August 13, 1994, the applicant was arrested by the County Police Department, Arlington, Virginia, Agency Case [REDACTED] and charged with:
  - a. CHARGE 1 – "NARCOTIC COCAINE-POSSESS"
  - b. CHARGE 2 – "MARIJUANA-POSSESSING"
2. On May 5, 1995, the applicant, under the name of [REDACTED] was arrested by the Fairfax County Police, [Virginia], Agency Case [REDACTED] and charged with:
  - a. CHARGE 1 – "HIT/RUN FELONY"
  - b. CHARGE 2 – "CONCEALED WEAPON"
3. On March 23, 1997, the applicant, under the name of [REDACTED] was arrested by the County Police Department, Arlington, Virginia, Agency Case [REDACTED] and charged with:
  - a. CHARGE 1 – "4901 ESCAPE"
  - b. CHARGE 2 – "2340 LARCENY-PETTY"

Pursuant to a letter dated April 3, 2003, the applicant was requested to submit the certified final court disposition for the charge(s) detailed above, and any other charges brought against him, and, in the event of any conviction, evidence such as the statute or sentencing guide, indicating whether the conviction(s) were felonies or misdemeanors. In addition, the applicant was requested to provide evidence of his nationality.

In response, the applicant submitted evidence of his nationality, including: the biographic page of his El Salvadoran passport, issued on December 28, 1999, by the Consulate General, Washington, D.C.; his El Salvadoran Identification Card issued on October 24, 1988; his birth certificate, with English translation; and, a document in Spanish with his photograph. The applicant also submitted:

4. An Arlington County Police Department, Arlington, Virginia, document dated April 14, 2003, indicating No Criminal Arrest Record in the name of "[REDACTED]" and,
5. A Local Adult Criminal Record Check with Notary, Fairfax County Police Department, Fairfax, Virginia, indicating the disposition of the charges listed in number 2 above on June 7, 1995:
  - a. The May 5, 1995, Hit and Run Felony charge was reduced to "HIT&RUN ACC -MISD," a misdemeanor for which the applicant was found guilty, sentenced to a fine and 90 days confinement, and
  - b. The "Concealed Weapon No Permit" charge was found as "Nolle Prosequi" for the charge of "Carry Concealed Weapon."

The applicant failed to provide final court dispositions for the other charges indicated in numbers 1 and 3 above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 21, 2003.

On appeal, the applicant states that he is submitting evidence for the charges of August 13, 1994 and "March 23, 1994 [sic]." In support of the appeal, the applicant submits:

6. An Arlington County Police Department, Arlington, Virginia, Conviction Data Request, dated July 29, 2003, in the name of "[REDACTED]" a.k.a. "[REDACTED]" indicating the disposition of the:
  - a. March 23, 1997, charge of Larceny-Shoplifting, as a Guilty finding on April 14, 1997, to the amended charge of "[REDACTED]" with a fine and confinement to run concurrent with the Escape Charge, and
  - b. The March 23, 1997, charge of "Escape," amended to Escape, Misdemeanor, with a fine and confinement; and,
7. Another Arlington County Police Department, Arlington, Virginia, Conviction Data Request, dated July 29, 2003, in the name of "[REDACTED]" a.k.a. "[REDACTED]" indicating the disposition of the:
  - a. March 23, 1997, charge of "Fail to ID" as Nolle Processed on April 14, 1997;
  - b. The August 13, 1994, Charge of "Possess Cocaine," as dismissed on May 15, 1995; and,
  - c. The August 13, 1994 Charge of "Possess Marijuana" as Nolle Processed on November 14, 1994.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.