

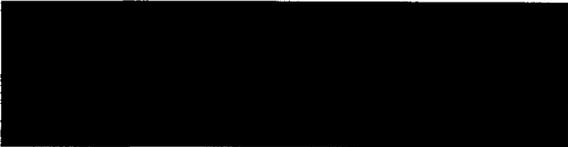
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**U.S. Citizenship
and Immigration
Services**

MI



FILE: [REDACTED]
[SRC 01 193 63222]

OFFICE: VERMONT SERVICE CENTER

DATE: **DEC 05 2005**

IN RE: Applicant: [REDACTED]

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 M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DEC 05 05-25M1244

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 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 she found that the applicant had failed to submit the 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.

The record reveals the following offenses:

- (1) On August 23, 2002, the applicant, under the name of [REDACTED] was arrested by the Police Department, Providence, Rhode Island, Agency Case-[REDACTED] and charged with: "CHARGE 1-11-34-8.1 M SOLICITING FROM MV FOR INDECENT PURPOSE."

Pursuant to a letter dated July 22, 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. The applicant failed to provide a final disposition for the charge indicated 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 April 26, 2004.

On appeal, the applicant states that he was arrested on April 23, 2002, that he went to court three times, and that the case against him was dismissed. He states that he did not receive the letter requesting this evidence, or he would have replied earlier, since he has no record. In support of the appeal, the applicant submits a document from the Bureau of Criminal Identification (BCI), Department of Attorney General, State of Rhode

Island and Providence Plantations, dated April 30, 2004, in which it is indicated that [REDACTED] does not have an adult criminal record at the BCI in Rhode Island.

It is noted that although the applicant indicates that he did not receive the request for additional evidence, it was mailed to the same address as was the denial decision, and as he has indicated on his appeal form as still being current. The applicant stated that he went to court three times and that the case against him was dismissed; he did not, however, provide any of the documentation relating to these court appearances and the dismissal of the charges. The document from the Department of Attorney General, Rhode Island, indicates that the record search was performed under the name [REDACTED] while the Federal Bureau of Investigation (FBI) fingerprint results report indicates that the charges were lodged under the name [REDACTED]. Therefore, this document alone is insufficient to conclusively establish that the applicant does not have a criminal record.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest 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). 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.