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

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FILE: [REDACTED]  
[EAC 02 002 53214]

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.

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 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 in support of his eligibility for TPS.

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 Federal Bureau of Investigation fingerprint results report reveals the following offenses in Virginia:

- (1) On December 4, 1999, the applicant was arrested and charged with “Fraudulent Use of Birth Certif, Drivers License” by the Fairfax County Police Department; and,
- (2) On March 14, 2000, the applicant was arrested and charged with “Unlawful Change of Name” and “Forging Public Records” by the Fairfax County Police Department.

Pursuant to letter dated May 9, 2003, the applicant was requested to submit the final disposition for each of the charges detailed above. In response, the applicant provided the following:

- (3) A police record check dated May 19, 2003, from the City of Fairfax, Fairfax, Virginia, reflecting that the applicant was arrested on March 14, 2000, and subsequently convicted of "Fraudulent Use of Identification", a misdemeanor, and sentenced to 180 days in jail and paid a fine of \$200;
- (4) Copies of case reports dated May 22, 2003, from the Fairfax County General District Court reflecting that the applicant was arrested and charged with "Public Swearing/Intoxication" on July 17, 2001 and on October 24, 2001;
- (5) A copy of a local adult criminal record check from the Fairfax County Police Department dated May 22, 2003, reflecting that the applicant was arrested for "Drunk in Public or Profane" on October 28, 1996, December 4, 1999, February 28, 2000, June 5, 2001 and October 24, 2001. In addition, this document reflects that the applicant was arrested for "Alter/Fraudulent Use of ID" on December 4, 1999; and,
- (6) Copies of his birth certificate from El Salvador along with an English translation.

On June 15, 2004, the director requested the applicant to submit certified judgment and conviction documents from the court(s) addressing the final dispositions for each of the above mentioned arrests detailed in Nos. 1, 2, and 5 above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charge was classified as a felony or misdemeanor. The applicant did not respond to the director's June 15, 2004 request. The director determined that the grounds for denial had not been overcome, and denied the application on August 25, 2004.

On appeal, the applicant submits a statement regarding his past actions and appeals his case so that he can continue working. However, the applicant has failed to provide the final court dispositions of his arrests as detailed above Nos. 1 and 2 above, and his arrests as noted in No. 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).

Further, 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and

affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. Therefore, the application will also be denied for this reason.

It is further noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.