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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2005  
[WAC 02 265 51682]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 determined that the applicant had failed to respond to a request for certified copies of the court disposition of his arrest. The director, therefore, denied the application.

On appeal, the applicant states that he is in the process of having his case reviewed before the court; therefore, he needs 90 additional days in which to submit a brief and/or evidence. However, to date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

- (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The Federal Bureau of Investigation (FBI) fingerprint results report reflects the following:

1. Arrested on August 17, 1997, in Los Angeles, California, and charged with exhibiting firearm on public highway, a felony. While the FBI report shows that the applicant was released on August 19, 1997, the actual court disposition of this arrest is not contained in the record.
2. Arrested on December 27, 1998, in Los Angeles, California, and charged with attempted rape by force/fear etc., a felony. The applicant has failed to submit the court's final disposition of this arrest.

In response to the director's request of October 27, 2003, to submit the final court disposition of the arrest listed in No. 2 above, the applicant, in his letter dated November 13, 2003, stated that he was in the process of having this record dismissed with the court and that he needed 90 additional days. Because the applicant failed to

provide the final court disposition as requested, the director denied the application on December 10, 2003. The applicant, on appeal, again states that he needs an additional 90 days in which to submit a brief and/or evidence.

The offense of attempted rape is a crime involving moral turpitude and conviction of this crime may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. However, the applicant has failed to submit the final court dispositions of his arrests as requested by the director. The applicant is, therefore, ineligible for TPS based on his failure to comply to the director's request to submit the final court dispositions of his arrests. Accordingly, the director's decision to deny the TPS application will be affirmed.

The record shows that in removal proceedings held on March 28, 1996, the Immigration Judge (IJ) withdrew the applicant's application for asylum and withholding of deportation; denied the applicant's motion for safe haven; and granted the applicant voluntary departure on or before May 28, 1996, with an alternate order of deportation if he should fail to depart as required. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On October 1, 1997, the BIA dismissed the appeal and permitted the applicant to depart from the United States within 30 days from the date of the order, and that in the event of the applicant's failure to depart, he shall be deported as provided in the IJ's order. The applicant failed to depart as required. He also failed to appear at the Los Angeles district office on January 13, 1998, for his enforced departure.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.