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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 03 2005
[EAC 01 270 50717]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 was ineligible for TPS because he was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), based on his drug conviction. The director, therefore, denied the application.

On appeal, the applicant requests another opportunity because he has become a good citizen since his previous arrest, he has complied with the law, and he has been working to become a better person.

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

(II) a violation of (or a conspiracy or attempt 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 U.S.C. § 802).

The Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested on July 30, 2000, in New York, and charged with Count 1, possession of forged instrument; Count 2, possession of forged instrument; and Count 3, possession of marijuana.

The applicant was requested on February 1, 2002, to submit the final court disposition of this arrest and of every charge against him. In response, the applicant furnished Certificate of Disposition from the Criminal Court of the City of New York, County of Queens. Based on this certificate, the director determined that the applicant was found guilty of the above charges. He, therefore, determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, due to his drug conviction.

The certificate of disposition, however, shows that although the applicant was arrested and charged with (1) possession of forged instrument, (2) possession of forged instrument, and (3) possession of marijuana, the applicant, on July 31, 2000, entered a plea of guilty to disorderly conduct, in violation of New York Penal Law 240.20. This certificate is not complete as it does not show the outcome of the three charges; rather, it shows only that the applicant pled guilty and sentence was imposed for PL 240.20. Furthermore, the certificate of disposition

states: "Caution: This document is not official unless embossed with the court seal over the signature of the court official." This document is devoid of the court seal; therefore, it is not an official document of the court. The applicant has failed to provide the actual final disposition of this arrest. Therefore, the finding of the director that the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, is withdrawn.

However, a conviction of possession of marijuana may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. Furthermore, the offense of possession of forged instrument may be 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. The applicant has failed to submit the actual final court disposition of his arrest as originally requested by the director on February 1, 2002; therefore, the applicant is ineligible for TPS pursuant to 8 C.F.R. § 244.9(a).

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.