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U.S. Citizenship
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FILE: [REDACTED]
[SRC 01 163 55645]

OFFICE: Texas Service Center

DATE: JUL 15 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

DISCUSSION: The application was denied by the Director, Texas 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 the applicant had failed to provide the final court dispositions of the charges relating to his criminal record.

On appeal, the applicant submits evidence 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.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On May 15, 2000, the applicant was arrested for Prohibited Weapons by the Irving, Texas, Police Department; and,
- (2) On December 17, 2000, the applicant was arrested for Driving While Intoxicated by the Dallas, Texas, Police Department.

Pursuant to a letter dated August 22, 2002, the applicant was requested to submit the final court dispositions for the charges as detailed above. The applicant did not respond to the director's August 22, 2002 request. The director, therefore, denied the application on January 7, 2003, because the applicant did not submit the final court dispositions regarding his past arrests in order to establish his eligibility for TPS.

On appeal, the applicant stated that he spent 15 days in jail and that he was convicted of two misdemeanor offenses. The applicant also submits copies of the final court dispositions and related arrest warrants for the following offenses:

- (3) On March 15, 2001, in the County Criminal Court 9 of Dallas County, Texas, Cause No. [REDACTED] the applicant was convicted of Possession of Prohibited Weapon (arrest date May 15, 2000, No. 1 above), a misdemeanor. The applicant was sentenced to 45 days imprisonment and paid a fine of \$50; and,
- (4) On March 15, 2001, in the County Criminal Court 9 of Dallas County, Texas, Cause No. [REDACTED] the applicant was convicted for Driving While Intoxicated (arrest date December 17, 2000, No. 2 above), a misdemeanor. The applicant was sentenced to 45 days imprisonment and paid a fine of \$220.25.

It is also noted that the record of proceedings contains information regarding the following offense:

- (5) On January 10, 1996, the applicant was arrested for Criminal Mischief, a misdemeanor. The record shows that on January 23, 1996, in the County Criminal Court 8 (J) of Dallas County, Texas, Case No. [REDACTED] the applicant was convicted of this offense; however, the record does not contain the actual final court disposition of this offense.

The applicant is not eligible for temporary protected status because he has been convicted of two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is 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.