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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]
[WAC 01 245 51395]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 24 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy 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 USC 802). Section 212(a)(2)(A)(i)(II) 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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The Federal Bureau of Investigation (FBI) Identification Record contained in the record reveals the following offenses:

- (1) On February 11, 1998, the applicant was convicted in the Superior Court of California, County of Los Angeles, of theft of property valued at greater than \$400 in violation of section 487(a) PC, a misdemeanor. (Arrest Date: November 11, 1997; Docket [REDACTED])
- (2) On December 5, 1997, the applicant was arrested in Los Angeles, California, and charged with battery of a non-cohabiting former spouse. According to the FBI Identification Record, prosecution was declined in this case; however, the applicant has failed to submit any corroborating evidence.
- (3) On January 11, 2001, the applicant was arrested in Los Angeles, California, and charged with one count of battery on person.
- (3) On July 14, 2001, the applicant was arrested in Los Angeles, California, on one count of battery of spouse, former spouse, date, etc.

Pursuant to a letter dated November 20, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to provide evidence of identity and evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

In response, the applicant provided the final court disposition of No. (1) detailed above, evidence of nationality and identity, and evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. He also provided a notice dated January 22, 2004, from the Superior Court of California, County of Los Angeles, indicating that no court arrest records were found for [REDACTED] on December 5, 1997, January 11, 2001 and July 14, 2001, and a notice dated February 9, 2004, from the Superior Court of California, County of Los Angeles, stating, "We have no record of arrest dates 12/5/97, 1/11/01, 1/14/01."

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 9, 2004.

On appeal, the applicant asserts that the Superior Court of California, County of Los Angeles, did not find any record of his arrests on December 5, 1997, January 11, 2001, and July 14, 2001, because those charges were dismissed. He provides a notice dated March 22, 2004, from the Superior Court of California, County of Los Angeles, indicating that no records were found for [REDACTED] for his arrests on 11/11/97, 12/05/97, 1/11/2001, or 7/14/01.

The applicant has not provided any evidence to corroborate his assertion that offenses (3) and (4) were dismissed.

The applicant has failed to provide any evidence revealing the final court disposition of offenses (3) and (4) detailed above. Although he was specifically instructed in the Notice of Intent to Deny to contact the California Bureau of Criminal Identification if the court was unable to locate his arrest records, the applicant has not provided any evidence that he attempted to contact that Bureau to obtain copies of the final court dispositions of charges (3) and (4). Therefore, 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).

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of two misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

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.