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

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 25 2005
[WAC 01 171 50629]

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:

[REDACTED]

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 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, counsel 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.

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.

The Federal Bureau of Investigation (FBI) fingerprint results record shows that on November 18, 2000, in Los Angeles, California, the applicant was arrested for battery against a spouse/ex-spouse/date/etc. Pursuant to a notice of intent to deny (NOID) dated March 27, 2003, the applicant was requested to submit: (1) evidence to show that he had resided in the United States since February 13, 2001; (2) documents to show that he had been physically present in the United States from March 9, 2001, to the date of filing his application; (3) documentation to establish his nationality and identity; and (4) police clearances from every city where he had lived since arriving in the United States, and to also provide a copy of the certified final court dispositions of all arrests. In response, the applicant failed to submit the final court dispositions of his arrests.

The director determined that the applicant had failed to submit the final court disposition of his arrest on November 18, 2000, in accordance with federal regulation, and denied the application on August 25, 2003.

On appeal, counsel asserts that the applicant has not committed any misdemeanors or felonies. She submits:

- (1) A clearance letter dated April 3, 2003, from the County of Los Angeles Sheriff's Office, indicating that a "name search only" inquiry reveals no record with the department from 1998 to the present, and advised the applicant to contact "the following agency(ies) for possible record: [REDACTED] LOS ANGELES STREET, LOS ANGELES, CALIF. 90012 Arrest Date: 11/18/2000 Booking Number: [REDACTED] 1) PC."
- (2) A letter dated August 29, 2003, from the Superior Court of California, County of Los Angeles, indicating that there is no record in that office making reference to [REDACTED] REGARDS TO AN INCIDENT FOR 2000 FOR DRINKING."

- (3) A letter dated September 4, 2003, from the Los Angeles Police Department (LAPD), certifying that the applicant had requested a copy of an arrest report from the LAPD. The letter states that the applicant must present current identification along with an INS form indicating arrest date, arresting agency, place and case number for each arrest report requested.

Counsel asserts that the applicant attempted to acquire documentation of police clearance from the Los Angeles Police Department. She states that if Citizenship and Immigration Services (CIS) requires further police clearance from the Los Angeles Police Department, that the CIS should provide him with a form indicating the specific arrest date and booking number as required by the LAPD.

It is noted that the clearance letter from the Sheriff's Department (No. 1 above) listed the date of arrest, the booking number, and the criminal charge against the applicant. The applicant could have submitted to the LAPD the director's Notice of Intent to Deny as a request form from CIS. It is further noted that the director's NOID advised the applicant that the "final court disposition must be obtained from the court, not the police station." Further, there is no evidence that the applicant used the arrest information, detailed in No. 1 above, to obtain the court documents from the court where the case was heard. Rather, the applicant submitted a court letter indicating that they have no record of a 2000 drinking incident (see No. 2 above).

The applicant has failed to provide the final court disposition of his arrest, detailed 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).

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.