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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 01 200 52635]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 05 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, 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 the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence of his residence and physical presence in the United States.

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.

The record reveals the following offenses:

- (1) On March 28, 2003, in the Superior Court of California, County of Alameda, California, Case No. [REDACTED] (arrest date March 17, 2003), the applicant was indicted for Count 1, driving under the influence of alcohol or drugs, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, [REDACTED] VC, a misdemeanor. On April 24, 2003, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, ordered to spend 7 days in the county jail, pay \$1299 in fines and costs, his driver's license was restricted for 18 months, and ordered to attend "DDP" for 18 months. Counts 2 and 3 were dismissed.
- (2) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 2, 2000, in San Francisco, California, the applicant was arrested and charged with Count 1, driving with .08 percent blood alcohol level or more [REDACTED] VC, a misdemeanor; Count 2, driving without a license [REDACTED] VC, a misdemeanor; Count 3, displaying fake, etc. identification card, [REDACTED] VC, a misdemeanor; Count 4, driving under the influence of alcohol or drugs, 23152(a) VC, a misdemeanor. The FBI report shows that the applicant was subsequently convicted of Count 4. However, the applicant failed to submit the actual, final court disposition of this arrest although he was requested on February 2, 2004, to submit the final court dispositions of any and all arrests.

Based on information contained in the FBI report (No. 2 above) and the court document furnished by the applicant (No. 1 above), the director determined that the applicant was ineligible for TPS because he was convicted of two misdemeanor offenses.

The record of proceeding, in this case, is devoid of the complete, actual court disposition of the applicant's arrest, detailed in No. 2 above, to establish that he was, in fact, convicted of the crimes listed in the FBI report. Therefore, the finding of the director that the applicant was convicted of two misdemeanor offenses will be withdrawn.

The applicant, however, failed to comply with the director's request to submit the final court dispositions of all arrests. He is, therefore, ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). The director's decision to deny the TPS application will be 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.