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FILE: [REDACTED]
[WAC 02 044 55226]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 02 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
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 sustained.

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 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.

The record reveals that the applicant was arrested in Ventura, California, on December 1, 1997, and charged with robbery, a felony.

Pursuant to a letter dated May 20, 2003, the applicant was requested to submit the final court disposition for the charge detailed above. In response, the applicant provided a “Detention Certificate” indicating that [REDACTED] was arrested on December 1, 1997, and released on the same day because the arresting officer was satisfied that there were insufficient grounds for making a criminal complaint against the person arrested.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application for abandonment on July 15, 2003. In his denial, the director stated, "The response to the requested information (court disposition) was not obtained from the court where the hearing took place and was not certified." However, since the applicant was only detained and subsequently released, there would be no court disposition in existence.

On appeal, the applicant states that he can't submit a final court disposition of his charge because no charges were filed against him. He submits a copy of the “Detention Certificate” previously submitted in response to the Notice of Intent to Deny. He also submits photocopies of documents dated June 17, 2003 and August 11, 2003, respectively, from the Superior Court of California, County of Ventura, indicating that no criminal

records were found for [REDACTED]” date of birth October 25, 1978. Both forms indicate that searches were conducted under both “[REDACTED]” and “[REDACTED]” and no criminal record was found.

The applicant has provided a Detention Certificate indicating that he was not charged with felony burglary in connection with his arrest on December 1, 1997, because the arresting officer was satisfied that there were insufficient grounds for formally charging the applicant with felony burglary. The applicant has provided sufficient evidence to establish that he was not charged or convicted of a felony, and the sole ground for the denial of the application has been overcome.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.