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**U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 16 2005**
[WAC 01 190 50081]

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.

The record reveals the following offenses:

1. On October 21, 2000, the applicant was arrested in Norwalk, California, and charged with one count of burglary.
2. On May 7, 2002, the applicant was arrested in Los Angeles, California, and charged with one count of theft.
3. On November 24, 2002, the applicant was arrested in Los Angeles, California, and charged one count of failure to appear after written promise and one count of theft.

Pursuant to a letter dated February 26, 2004, the applicant was requested to submit the final court disposition for all arrests since his arrival in the United States. In response, the applicant submitted the final court disposition of the arrest detailed in No. 1 above. The court document indicates that the applicant was arrested on October 31, 2000, and charged with one count of burglary in violation of section 459 PC, a misdemeanor

and one count of theft of property in violation of section 484(a) PC, both misdemeanors. On November 2, 2000, the applicant was convicted of count two, theft of property in violation of section 484(a) PC, a misdemeanor. Count 1 was dismissed due to plea negotiation.

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 29, 2004.

On appeal, the applicant states that he was only convicted of one misdemeanor, theft of property, and he believes he is eligible for TPS. He submits the same court disposition document previously submitted in response to the Notice of Intent to Deny. The applicant highlighted three dates on the court document: the first on November 2, 2000, indicating that he was convicted of count 2, theft of property; the second on May 9, 2002, indicating that the applicant was present in court for payment of a fine in the amount of \$243.00; and the third on November 26, 2002, indicating that the applicant was present in court after issuance of a bench warrant issued on October 23, 2002, because he failed to complete the required period of community service as ordered.

The court disposition document indicates that the applicant was convicted of theft of property on November 2, 2000. He was placed on summary probation for a period of 36 months under the following terms and conditions: that he serve three days in the Los Angeles County Jail less credit for three days served; that he pay fines in the amount of \$243.00 in court on May 17, 2001; or, in lieu of jail or fine, that he perform 25 days of community service, and file proof of completion with the Clerk of Court on May 17, 2001; and, that he stay away from the Vons-Santa Clarita Valley area of California and obey all laws and orders of the court. On May 15, 2001, the applicant was present in court to submit proof of community service and for fine payment as ordered.

On July 25, 2001, the applicant was not present in court, and not represented by counsel. Therefore, his probation was revoked and a bench warrant was issued in the amount of \$15,000. On July 31, 2001, the applicant was present in court as ordered. His probation was reinstated, and he was ordered to pay a fine of \$750 plus a state penalty fund assessment of \$1,275.00, with total fines due of \$2,030.00. The bench warrant was recalled.

On November 6, 2001, the case was called for fine payment. The applicant was not present in court, and not represented by counsel. Once again, his probation was revoked and a bench warrant was issued in the amount of \$17,500.00. On December 12, 2001, the case was called for judicial action. The applicant was present in court, and represented by counsel. The applicant and counsel both stipulated to violation of probation in open court, and the court found the applicant in violation of probation. His probation was reinstated and continued on the same terms and conditions with the modification that the applicant was ordered to serve 200 days of community service.

On April 12, 2002, the case was called for a progress report. The defendant was not present in court, and was not represented by counsel. His probation was revoked, and the court ordered a bench warrant with no bail allowed. On May 9, 2002, the applicant was present in court, and represented by counsel. The applicant and counsel stipulated violation of probation in open court, and the court found the defendant in violation of probation. The court reinstated the applicant's probation under the same terms and conditions with the

modification that the applicant was ordered to serve two additional days in the Los Angeles County Jail, and the applicant was ordered to pay a fine in the amount of \$243.00 on May 9, 2002.

On May 9, 2002, the case was called for fine payment. The applicant was present in court, and he paid the required fine of \$243.00. On October 23, 2002, the case was called for proof of community service. The applicant was not present in court, and was not represented by counsel. The court revoked his probation for failure to submit proof of the required community service, and a bench warrant was issued in the amount of \$20,000.00. On November 26, 2002, the applicant was present in court and was represented by counsel. The applicant and counsel stipulated violation of probation. The court revoked his probation and reinstated probation on the same terms and conditions except that the requirement for community service was deleted, and an order of commitment was issued. On April 7, 2004, the proceedings were terminated.

The evidence submitted by the applicant is not sufficient to establish that the arrests detailed in Nos. 2 and 3 above are not independent arrests. 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.