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U.S. Citizenship
and Immigration
Services

ML

[REDACTED]

FILE: [REDACTED]
[EAC 01 171 50649]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 17 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:

[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, Vermont 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 the applicant had been convicted of a felony.

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.

The record reveals that the applicant was convicted on April 24, 2002, in the State of New York County Court, Albany, New York, of offering a false instrument for filing in the first degree in violation of Section 175.35 of the Penal Law of the State of New York, a felony. (Date of Arrest: June 26, 2001; Case Number

On appeal, the applicant states she believed she had only been convicted of one misdemeanor. She submits a photocopy of the complaint document charging her with offering a false instrument for filing in the first degree in violation of section 175.35 of the Penal Law of the State of New York, with the following sentence near the bottom of the document highlighted:

False statements made herein are punishable as a Class A Misdemeanor pursuant to Sec. 210.45 Penal Law.

This statement does not reflect the classification of the applicant’s offense as a misdemeanor. Rather, it indicates that a false statement made on the complaint document is punishable as a Class A Misdemeanor.

Pursuant to Section 175.35 of the Penal Law of the State of New York, a person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation. **Offering a false instrument for filing in the first degree is a class E felony.** (Emphasis added.)

The applicant is ineligible for TPS due to her record of one felony conviction, detailed above. 8 C.F.R. § 244.4(a). There is no waiver available for this ground of inadmissibility. 8 C.F.R. § 244.3(c)(1). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant's previous application for asylum and for withholding of removal was denied on August 24, 1995, and she was referred for a removal hearing before an Immigration Judge. On February 27, 1996, the Immigration Judge in New York, New York, administratively closed the proceeding without prejudice to the government.

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.