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U.S. Citizenship
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ML

[REDACTED]

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: NOV 23 2005

[SRC 01 271 59669]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 she found the applicant failed to submit certified final court dispositions for the criminal charge(s) in his record.

On appeal, counsel for the applicant provides 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 parole; 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 25, 2003, the applicant was arrested by the Dallas Police Department, and charged with CHARGE 1: EVADING ARREST/DETENTION W/VEH 38.04 PC FS.

On appeal, counsel states that the applicant did not respond earlier because he was unable to locate the necessary documents. Counsel states that the applicant has not yet completed his probation and therefore does not have proof of completion of his probationary sentence. In support of the appeal, counsel submits photocopies of the following documentation:

1. The applicant's State of Texas Identification Card issued in 2004;
2. A Felony Record Search Certificate, Dallas County District Clerk dated June 14, 2004, reflecting the case [REDACTED] for the charge FV EVADE ARREST/D NAOG;
3. The State of Texas vs. [REDACTED] Conditions of Probation, Case [REDACTED] a State Jail Felony, indicating Deferred Adjudication, and the imposition of probation for 2 years beginning on November 10, 2003, fines, and community service;
4. A Dallas County District Clerk Payment Schedule, for fines due in the case [REDACTED] and,
5. A largely illegible copy of Reporting Instructions following release from jail.

Although deferred adjudication of the applicant's conviction was granted, under the Immigration and Nationality Act, Sections 101(a)(48)(A)(i), (ii), and (B), the applicant is still considered as having been convicted of a felony. The evidence of record indicates that the applicant is ineligible for TPS due to his

record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is also noted that on his Form I-821, Application for Temporary Protected Status, the applicant indicated that he had been: "arrested on July 3, 2001 for Suspended Driver's License and No Insurance in Fort Worth. Currently pending." Although these charges do not appear on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on April 1, 2004, to submit certified copies of his arrest records, indictments (if applicable), and all final court dispositions for all of his arrests, convictions or confinements. The applicant did not provide any further evidence relating to the July 2001 charges.

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.