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**U.S. Citizenship  
and Immigration  
Services**

MI

FILE: [REDACTED]  
[EAC 02 283 53279]

OFFICE: VERMONT SERVICE CENTER

DATE: **OCT 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:  
[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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again 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 TPS application because he found that the applicant had failed to submit the final court disposition of a charge of larceny and concealment, stemming from his arrest in 1992 in Arlington, Virginia.

On appeal, counsel asserts that the applicant has not been convicted of two misdemeanors. Counsel also asserts that it is not possible to provide the final court disposition of the charge of larceny and concealment and refers to the Deputy Clerk's letter submitted on appeal. The applicant submits the following documentation:

1. A copy of a letter dated March 3, 2004 from the Deputy Clerk of the Arlington General District Court addressing the court's procedure with reference to the retention of criminal records.

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 January 14, 1992, the applicant was arrested in Arlington, Virginia and charged with larceny and concealment.
- (2) On June 27, 1995, the applicant was arrested on a charge of "sexual solicitation" which was dismissed on September 5, 1995.

Counsel asserts that the applicant has complied with all requests made by the Service Center Director with respect to final criminal court dispositions. Counsel further asserts that the Deputy Clerk of Arlington General District Court has informed the applicant in the letter dated March 3, 2004 that the court is unable to comply with his request for criminal records relating to No. 1 above because criminal records are kept by the court for ten years and thereafter shall be destroyed.

The director in the Notice of Intent to Deny dated May 15, 2003, specifically requested the following:

The final disposition (your sentence, probation, dismissal, etc.) of every charge against you. The charge and disposition must be specifically identified (not just numeric citations or codes).

If you were convicted of any charge, you must also provide evidence showing whether the charge for which you were convicted was classified as a felony or misdemeanor. You must submit a copy of the pertinent statute, sentencing guide, or statement from the court clerk or police department for this purpose.

Contrary to counsel's assertions, although the Commonwealth of Virginia may destroy criminal records, there is nothing in the code that indicates that the applicant is unable to obtain a criminal history record via the statewide criminal justice information computer system, from the police department, or from the District Attorney's office. The applicant has the burden of proving that he meets the eligibility requirements for TPS. The director's request was not necessarily for the original court records, but rather for the final disposition of the arrest charges. Without documentation attesting to the final court dispositions, the AAO is unable to determine the applicant's eligibility for TPS. Therefore, the director's decision to deny the 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.