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

M

[REDACTED]

FILE:

[REDACTED]

[EAC 01.193 54824]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 06 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 determined that the applicant was not eligible for TPS because he failed to submit a copy of the final court disposition on the charge of prostitution, for which he was arrested in Jacksonville, Florida on June 12, 1991.

On appeal, counsel contends that the applicant has only been convicted of one misdemeanor, thus making him eligible for TPS.

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 27, 1992, the applicant was convicted of a traffic violation (citation number [REDACTED] in Jacksonville, Florida, stemming from an arrest on May 28, 1991;
- (2) On January 27, 1992, the applicant was convicted of a traffic violation (citation number [REDACTED] Jacksonville, Florida, stemming from an arrest on May 28, 1991;
- (3) On December 16, 1991, the applicant was convicted of one count of driving on a suspended or revoked license (misdemeanor case [REDACTED] in Jacksonville, Florida, stemming from an arrest on November 25, 1991; and,
- (4) On June 12, 1991, the applicant was arrested and charged with one count of prostitution (misdemeanor) in Jacksonville, Florida. It appears that the applicant was subsequently convicted of this offense; however, the actual court disposition has not been provided.

On appeal, counsel argues that the applicant has three traffic violations/convictions that are not misdemeanors and that the applicant's judgment and conviction of soliciting for prostitution is a misdemeanor. Counsel concludes that the applicant is eligible for TPS having been convicted of only one misdemeanor. Counsel submits a copy of an arrest and booking report with regard to the applicant's arrest for prostitution. Counsel also submits disposition reports pertaining to the three traffic violations committed by the applicant. Further, in counsel's appellate brief he states that the applicant has only been convicted of one misdemeanor (prostitution); however, in that same brief counsel appears to be stating that the misdemeanor was only a

"complaint," not an actual conviction and implies that driving on a suspended license is the applicant's only misdemeanor conviction. There has been no evidence submitted to explain this inconsistency.

The two traffic disposition reports (Nos. 1 and 2 above) fail to identify the specific charge for which the applicant was found guilty. The documents contain only indecipherable codes, abbreviations or numeric citations. In addition, the arrest and booking report is not a final court disposition and fails to establish the disposition of the charges against the applicant. The information establishes what Citizenship and Immigration Services (CIS) already knew, namely, that the applicant had been charged with several crimes, but it falls short of informing CIS of the final disposition. The applicant has failed to provide a decipherable disposition in order to allow CIS to ascertain the outcome of each arrest. Therefore, the appeal will be dismissed.

The applicant has failed to provide sufficient evidence revealing the final court disposition of his arrest detailed above. 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.