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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

DEC 07 2006

[WAC 01 242 60368]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) 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 determined that the applicant was ineligible for TPS because the applicant had been convicted of two misdemeanor offenses committed in the United States.

On appeal, the applicant provides a statement regarding his eligibility and two letters.

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, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested by the Los Angeles Police Department for the following offenses:

- (1) On May 4, 2000, the applicant was arrested and charged with “Theft”;
- (2) On May 6, 2000, the applicant was arrested and charged with “Poss/Mfg/Sell Dang. Weapon”;
- (3) On May 8, 2000, the applicant was arrested and charged with “Indecent Exposure w/prior”;
- (4) On June 10, 2000, the applicant was arrested and charged with “Theft”;
- (5) On January 7, 2001, the applicant was arrested and charged with “Pthft w/pr Jail”;

- (6) On November 11, 2001, the applicant was arrested and charged with "Force/Adw Not Firearm, GBI";
- (7) On January 2, 2002, the applicant was arrested and charged with "Theft";
- (8) On April 9, 2003, the applicant was arrested and charged with "Grand Theft from Person", "Theft", "Solicit Lewd Act", and "Pos/Mfg Sell Dang Wpn/Etc"; and,
- (9) On May 29, 2003, the applicant was arrested and charged with "PTHFT W/PR Jail, Spec Ofns".

Pursuant to a notice of intent to deny his application for TPS dated October 5, 2005, the applicant was requested to submit the final court disposition for the charges as detailed above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charge was classified as a felony or misdemeanor.

The director determined that the applicant was ineligible for TPS because the applicant committed two misdemeanors within the United States. Therefore, the director denied the application on April 21, 2006.

On appeal, the applicant states that he is aware of his past mistakes and that he has changed. In addition, the applicant submits two reference letters from Pastor, Evelio Miranda and Minister Juilo S. Llarena.

The record of proceedings contains true test copies of the court dispositions from the Superior Court of Los Angeles County, California regarding his arrests for Nos. 3, 5, 8, and 9 above.

A review of the court dispositions reveals that the applicant was convicted of (A) Disorderly Conduct: Lewd Act, a misdemeanor; (B) Petty Theft with a prior theft conviction (Section 666), a misdemeanor; and (C) Carrying a Dirk or Dagger (Section 12020), a misdemeanor. The court dispositions contained in the record reflect that the applicant has been convicted of at least three misdemeanors within the United States.

The applicant is not eligible for temporary protected status because he has been convicted of at least three misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is 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.