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FILE: [REDACTED]
[EAC 02 252 50756]

OFFICE: VERMONT SERVICE CENTER

DATE **JUL 25 2006**

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.

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

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 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits 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.

8 C.F.R. § 244.1.

The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On June 29, 2003, the applicant was arrested in Hempstead, New York, and charged with: (1) criminal mischief in the third degree in violation of section 145.05 PL, a Class E felony, and (2) criminal possession of a weapon in the fourth degree in violation of section 265.01 PL, a class A misdemeanor. The fingerprint results report indicates that on September 2, 2003, the applicant pled guilty in the Nassau County District Court, Nassau County, New York, to the reduced charge of criminal mischief with intent to cause property damage in violation of section 145.00 PL, a Class A misdemeanor. (Case No. 2003NA013273).
2. On December 13, 2003, the applicant was arrested in Queens, New York, and charged with: (1) one count of criminal possession of a controlled substance in violation of section 220.03 PL, a Class A misdemeanor, and (2) one count of criminal trespass in the third degree in violation of section 140.10 PL, a Class B misdemeanor. The fingerprint results report indicates that on December 14, 2003, the applicant pled guilty in the Criminal Court in Queens, New York, to disorderly conduct in violation of section 240.20 PL, a violation. (Case No. 2003QN056591).

Pursuant to a letter dated June 29, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on January 12, 2005.

On appeal, the applicant states that he never received the Notice of Intent to Deny dated June 29, 2004. He submits a document from the District Court of Nassau County, New York, indicating that the applicant's conviction on the charge of disorderly conduct was discharged after adjournment under the provision of section 170.55 CPL.

This court document appears to relate to a different offense not listed above. This document relates to District Court of Nassau County Docket Number 2003NA009296, and the date of arrest is listed as May 12, 2003. The record contains no further information concerning this arrest. Nevertheless, the applicant has failed to provide any evidence revealing the final court dispositions of his arrests detailed in Nos. (1) and (2) 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, as described at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.