U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] [EAC 01 193 51954] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 12 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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and 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 the applicant had been convicted of two misdemeanors committed in the United States, and also because he failed to submit the final dispositions of all of his arrests.

On appeal, the applicant states that he has requested records from the court but that it will take several weeks to receive them.

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.
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> *Misdemeanor* means a crime committed in the United States, either
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> (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
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> (2) A crime treated as a misdemeanor under the term "felony" of this section.
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> 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 October 19, 1979, in the Southern District of Texas, Laredo Division, Docket No. [redacted] the applicant was convicted of "unlawfully entering the United States by wading the river, thereby evading examination or inspection by immigration officers," in violation of 8 U.S.C. §1325, a misdemeanor. He was sentenced to serve 60 days in prison.

(2) On December 19, 1984, in the Brighton Court Division, Massachusetts, Docket No. [redacted], the applicant was convicted of attempting to commit a crime, c274 §6, a misdemeanor. He was placed on probation for a period of one year.

(3) On October 13, 1989, in the Cambridge Court Division, Massachusetts, Docket No. [redacted] the applicant, under the name [redacted] was found guilty of carrying a firearm without a license, a misdemeanor. He was ordered to serve one year in jail. On February 13, 1999, under Docket No. (Jury Court) [redacted] the court denied the applicant's Motion to Suppress and was found guilty of the offense. He was sentenced to serve one year in jail.

(4) The applicant subsequently submitted the records of the Chelsea Court Division, Massachusetts, indicating that on June 16, 1992, the complaint for the offense of disorderly person, c272 § 53, was dismissed.

The applicant is ineligible for TPS due to his three misdemeanor convictions, detailed in Nos. 1, 2, and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

The record indicates that a Warrant of Deportation, Form I-205, was issued in San Antonio, Texas, on November 15, 1979, based on the final order of removal by an immigration judge. On December 4, 1979, the applicant was removed from the United States to El Salvador. The record further indicates that on May 23, 1996, the applicant was encountered by the Border Patrol at the Greyhound Bus Terminal in Buffalo, New York, after he was refused passage on a Canada-bound bus. During an interview at that time, the applicant stated that he entered the United States without inspection on or about March 15, 1980, near McAllen, Texas. Form I-210, Voluntary Departure Notice, was issued, granting the applicant voluntary departure until June 22, 1996. There is no evidence that the applicant departed from the United States as required.

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.