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U.S. Citizenship
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[REDACTED]

Mr

FILE:

[REDACTED]

[EAC 01 182 50862]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 15 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:

[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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 withdrew the applicant's Temporary Protected Status because the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, the applicant submits the requested court documents. The applicant also states that she regrets her behavior and requests that she be allowed to continue under 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.

According to 8 C.F.R. § 244.14, The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of the following:

- (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status.

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 record reveals the following offenses:

- (1) On October 3, 2003, the applicant was arrested by the Suffolk County, New York Police Department for “Petit Larceny.”
- (2) On November 20, 2003, the applicant was arrested by the Suffolk County, New York Police Department for “Assault with Intent to cause Physical Injury.”
- (3) On October 3, 2003, the applicant was arrested by the Suffolk County, New York Police Department for “Forgery.”

Pursuant to a letter dated July 28, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to respond to the notice. Therefore, the director withdrew the application on November 5, 2004.

On appeal, the applicant submits the final dispositions for the October 3, 2003 and November 20, 2003 arrests. The "Petit Larceny" charge was reduced and the applicant was convicted of "Unlawfully Using Slugs in the 2nd Degree", a misdemeanor. The assault charge was reduced and the applicant was convicted of "Harassment in 2nd Degree", a violation. The fact that New York's legal taxonomy classifies the applicant's offense as a "violation" rather than a "crime," and precludes the offense from giving rise to any criminal disabilities in New York, is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes. As cited above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, New York law provides that "Harassment in 2nd Degree" is punishable by up to fifteen days incarceration. Therefore, we conclude that the applicant's conviction in No.2 above qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for temporary protected status because of her two misdemeanor convictions. 8 C.F.R. § 244.4(a).

Furthermore, the applicant has failed to provide any evidence revealing the final court disposition of No. 3 detailed above. The applicant is therefore also ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

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.