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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]
[EAC 01 211 52048]

OFFICE: VERMONT SERVICE CENTER

DATE:

AUG 02 2007

IN RE:

Applicant: [REDACTED]

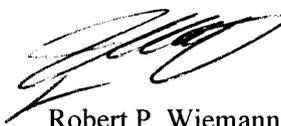
APPLICATION:

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, 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 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 found the applicant ineligible for TPS because the applicant has been convicted of two or more misdemeanors in the United States.

On appeal, counsel for the applicant asserts that the applicant has an action pending to overturn his criminal convictions.

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 March 21, 2005, the applicant pled guilty to Operating a Vehicle Under the Influence in the District Court of Southern Essex, Massachusetts.
- (2) On March 21, 2005, the applicant pled guilty to Negligent Operation of a Motor Vehicle in the District Court of Southern Essex, Massachusetts.
- (3) On March 21, 2005, the applicant pled guilty to Leaving the Scene of an Accident with Property Damage in the District Court of Southern Essex, Massachusetts.
- (4) On March 10, 2005, the applicant was arrested in Lynn, Massachusetts, and charged with four counts of "rape of child with force" and one count of "assault to rape child." (Docket # [REDACTED]) The applicant submitted a case summery printout from the Essex Superior Court showing that the applicant pled not guilty to these charges, however, the final court disposition has not been provided despite a request from the director on November 4, 2005.

On appeal, counsel for the applicant indicates that the applicant's convictions will be appealed.

The AAO has no jurisdiction to review the merits of a criminal case, nor can it make a determination as to the legitimacy of any claimed defenses to prosecution. The record reveals multiple misdemeanor convictions.

The applicant has failed to provide the final disposition for the charge listed at No. 4 above. The charge listed at No. 4 above constitutes a crime involving moral turpitude, and would render the applicant inadmissible in

addition to being ineligible. Section 212(a)(2)(A)(i)(I). While the issue of the applicant's inadmissibility was not raised by the director, the final disposition of the charge listed at No. 4 above is a material line of inquiry for this proceeding. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying an application. 8 C.F.R. § 103.2(b)(14). The applicant has failed to provide the final disposition for the charge listed at No. 4 above, and the application will be denied for this additional reason.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions detailed above. Section 244.2(b) and (c). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.