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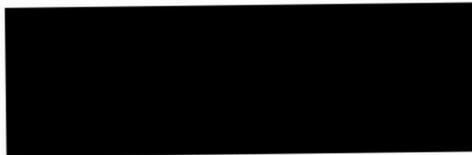
**JAN 08 2007**

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:  
[WAC 05 224 87602]

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:



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, California 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 had been convicted of two misdemeanors.

On appeal, counsel for the applicant submits a brief.

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 July 2, 1991, the applicant was arrested in Costa Mesa, California, and charged with one count of commercial burglary in violation of section 484-488 PC, a misdemeanor, and one count of falsely identifying himself as another person to a police officer in violation of section 148.9(a) PC, a misdemeanor. On July 5, 1991, the applicant was convicted of both charges in the Municipal Court of the State of California, Harbor Judicial District, Newport Beach, California. (Case No. [REDACTED])
2. On July 23, 1991, the applicant was arrested in Santa Ana, California, and charged with: one count of theft, one count of petty7 theft, and one count of providing false identification to a police officer. The applicant has not provided the final court disposition of this arrest.

On appeal, counsel for the applicant asserts that both misdemeanor documents resulted from one incident and do not show a pattern of criminal activity. Counsel states that the applicant has not committed any other offenses since those convictions. Nevertheless, it remains that the applicant has been convicted of two misdemeanor offenses.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed in No. 1 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver for this ground of inadmissibility. 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 provided sufficient evidence to establish his identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). The applicant has also failed to submit sufficient credible evidence to establish his eligibility for late initial registration as set forth at 8 C.F.R. § 244.2(f)(2). Additionally, the applicant has not provided sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as set forth at 8 C.F.R. § 244.2(b) and (c). Finally, the applicant has not provided the final court disposition of the arrest detailed in No. 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). 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.