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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUN 01 2007  
[EAC 02 005 50526]

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 inadmissible under section 244(c)(2)(B) of the Act due to his conviction of two or more misdemeanors.

On appeal, the counsel for the applicant asserts that the applicant has not been convicted of two or more misdemeanors and submits nothing more in support of the application.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On November 19, 2000, the applicant was arrested and charged with criminal possession of a weapon. On January 4, 2001, the applicant pled guilty to an amended charge of attempted criminal possession of a weapon, a misdemeanor. (Docket #
- (2) On November 19, 2000, the applicant was charged with a second count of criminal possession of a weapon. This charge was subsequently dismissed on January 4, 2001.
- (3) On November 19, 2000, the applicant was charged with one count of Disorderly Conduct. This charge was subsequently dismissed on January 4, 2001.
- (4) On August 28, 2004, the applicant was arrested and charged with criminal possession of a controlled substance. The applicant was subsequently convicted of a reduced charge of disorderly conduct, a misdemeanor. (
- (5) On August 28, 2004, the applicant was charged with loitering and use of a controlled substance. This charge was dismissed on October 19, 2004.

On appeal, counsel for applicant contradicts the director's conclusion that the applicant has been convicted of two or more misdemeanors but fails to provide any evidence in support of his assertion. Going on record

without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On October 24, 2005, the director sent the applicant a request for evidence (RFE) and specifically requested the final dispositions any criminal charges against the applicant. An FBI report contained in the record indicates the applicant has been charged with the above detailed criminal charges. The record contains transcripts from the District Court of the County of Suffolk, New York, indicating that the applicant has been convicted of two separate misdemeanors, as detailed above. These court records were provided by the applicant himself.

The applicant is ineligible for TPS due to conviction of two misdemeanor crimes, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel for the applicant's statements on appeal are frivolous in the face of evidence clearly establishing conviction of two misdemeanors. In addition the applicant repeatedly failed to reveal his criminal record as requested on Form I-821, questions 2.A and C. Consequently, the director's decision to deny the application for this reason will be affirmed.

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.