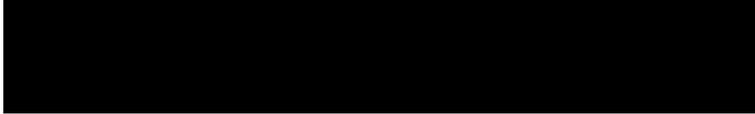




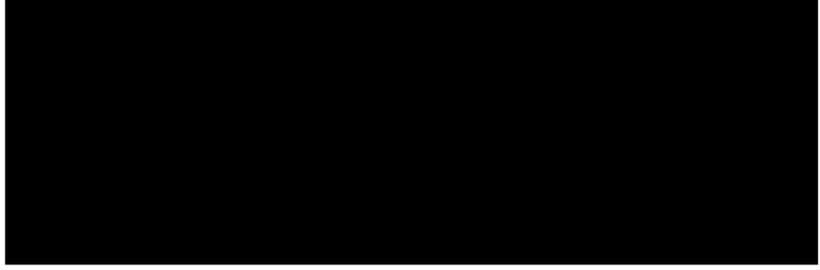
U.S. Citizenship
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FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 09 2007
[WAC 01 263 55731]

IN RE: Applicant: 

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 failed to submit certified final court dispositions of all of his arrests.

On appeal, counsel submits a statement.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a notice of intent to deny was issued on January 9, 2004, requesting that the applicant submit the final court dispositions of all of his arrests, including arrests listed on the FBI report. In response, the applicant submitted the following court disposition:

1. On August 26, 1994, in the Superior Court of California, Santa Cruz County, Crime Report/Case No. [REDACTED] (arrest date July 24, 1994), the applicant (name used: [REDACTED]) was indicted for Count 1, public intoxication, 647(f) PC, a misdemeanor; and Count 2, failure to appear on written promise, PC 853.7 PC, a misdemeanor. On September 21, 1994, the applicant was convicted of Count 1. He was sentenced to serve one day in jail. Count 2 was dismissed.

Because the applicant failed to submit the court dispositions of all of his arrests, the director denied the application on February 27, 2004.

On appeal, counsel asserts that the evidence does not support the director’s factual finding that the applicant failed to meet his burden of proving that he was not convicted of one felony and/or two or more misdemeanors. He further asserts that in response to the director’s notice, the applicant provided evidence that he had been convicted of one misdemeanor, and that the other charge had been dismissed.

The FBI report, however, indicates that the applicant was arrested for the following offenses:

2. On January 31, 1998, in Santa Cruz, California, the applicant (name used: [REDACTED]) was arrested for the felony offense of “false citizenship/resident alien document.”

3. On December 25, 1999, in Santa Cruz, California, the applicant was arrested for Count 1, "driving under the influence of alcohol/drug, with priors;" Count 2, "driving with .08 percent blood alcohol level or more, with priors;" Count 3, "driving without a license;" and Count 4, "failure to prove financial responsibility."
4. On January 1, 2000, in Santa Cruz, California, the applicant was arrested for Count 1, "false identification to specific peace officers;" and Count 2, "driving with .08 percent blood alcohol level or more." Also on January 1, 2000, in Santa Cruz, California, the applicant was arrested for "disorderly conduct, under the influence of drugs."

The applicant has failed to provide the final court dispositions of his arrests, detailed in Nos. 2, 3, and 4 above, as had been requested by the director. 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). Accordingly, the director's decision to deny the TPS application 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.