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U.S. Citizenship
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Services

Handwritten initials or signature

[Redacted]

FILE: [Redacted]
[SRC 01 180 64911]

OFFICE: TEXAS SERVICE CENTER

DATE: MAY 31 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts the applicant's claim of eligibility for 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.

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:

- I. On April 24, 2002, the Titus County Court in the State of Texas convicted the applicant of driving while intoxicated, a class A misdemeanor.
- II. On October 21, 2002, the Mount Pleasant (Texas) Police Department arrested the applicant and charged him with "inj child/elderly/disabled reckless BI," a first-degree felony charge.

Pursuant to a letter dated January 4, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted the final court disposition stemming from his arrest in April of 2002. The applicant did not submit a final court disposition stemming from his October 21, 2002 arrest.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 21, 2006.

On appeal, counsel states that the applicant could not provide a conviction record with respect to his October 21, 2002 arrest because no conviction record existed. Counsel submitted a criminal records check memo obtained from the Titus County Court located in Mount Pleasant, Texas, which indicated that there where no felony records found for the past ten years on [REDACTED]

Contrary to counsel's assertion, the applicant has failed to provide sufficient evidence revealing the final court disposition of his October 21, 2002 arrest as detailed above. It is noted that the applicant has used the names

[REDACTED] and [REDACTED] in the past, and that the memo does not indicate that those names were checked for possible criminal arrests and/or convictions. Furthermore, while the original charge detailed in No. II above is a felony; a subsequent misdemeanor charge would not be disclosed on a felony record check. Therefore, 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 director's decision to deny the 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.