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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W,
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: APR 07 2004
EAC 01 181 52614

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: Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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. § 1254a.

The director determined that the applicant failed to submit court dispositions of his arrests, as had been requested. The director, therefore, denied the application.

On appeal, the applicant submits additional court records.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects several arrests in Maryland regarding the applicant. The applicant was, therefore, requested on February 23, 2002, to submit the court's final dispositions of

the arrests. He was advised that if he was convicted of any charge, he must also provide evidence showing whether the charge for which he was convicted was classified as a felony or a misdemeanor. Because the applicant failed to submit all of the requested court records, the director denied the application.

1. On October 20, 1992, the applicant was arrested and charged with Count 1, burglary, and Count 2, destruction of property.

2. On April 5, 1993, the applicant was arrested and charged with Count 1, assault, and Count 2, resisting arrest.

3. On July 3, 1993, the applicant was arrested and charged with Count 1, trespassing; Count 2, disorderly intoxication; and Count 3, resisting arrest.

4. On October 8, 1993, the applicant was arrested and charged with the felony offense of possession with intent to distribute.

5. On September 30, 1994, the applicant was arrested and charged with "rogue and vagabond." The record reflects that the applicant was convicted of this charge on October 31, 1994, and he was sentenced to 31 days credit for time served.

6. On December 27, 1994, the applicant was arrested and charged with theft.

7. On September 7, 1999, the applicant was convicted of disorderly conduct. He was sentenced to 60 days in jail, sentence suspended, and he was placed on probation for a period of one year.

On appeal, the applicant submits the following court disposition:

8. On January 24, 2001, the applicant was arrested and charged with Count 1, carrying a concealed deadly weapon, and Count 2, possession of marijuana. On March 8, 2001, a *nolle prosequi* was entered as to Count 1. On June 26, 2001, a *nolle prosequi* was entered as to Count 2.

The applicant has failed to submit the arrest reports and the court's final dispositions of his arrests listed in paragraphs 1, 2, 3, 4, and 6 above, as had been requested by the director. Further, the applicant failed to comply with the director's request that if he was convicted of any charge, he must also provide evidence showing whether the charge for which he was convicted was classified as a felony or misdemeanor. However, the offenses of rogue and vagabond, and disorderly conduct (paragraph 5 and 7 above) are misdemeanors. The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two or more misdemeanor convictions, and based on his failure

to submit additional evidence as requested. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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.