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**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

FEB 08 2005

[WAC 01 199 55862]

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.

Robert P. Wiemann, Director
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 he had been convicted of at least one misdemeanor committed in the United States.

On appeal, counsel asserts that the director "only listed one misdemeanor and two arrests which could not constitute another misdemeanor."

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

misdeemeanors 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, the applicant was requested on March 28, 2003, to submit final court dispositions of all arrests, including arrests on August 29, 1993 for resisting arrest; on October 25, 1993 for willfully resisting/delaying; and on March 1, 2002 for entering noncommercial dwelling. In response, the applicant submits the following court documents:

- (1) On March 5, 2002, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date March 1, 2002), the applicant was convicted of attempted-unauthorized entry of a dwelling-house, 664/602.5 PC, a misdemeanor. He was placed on probation for a period of 36 months, and ordered to spend 5 days in the county jail.
- (2) A Minute Order of the Superior Court of California, County of Ventura, under Case No. [REDACTED], a misdemeanor offense (type of offense not named), indicating that this case was discharged by the court on February 26, 2003.
- (3) A letter from the Superior Court of California, County of Ventura, indicating that misdemeanor criminal records over five years old and cases pertaining to infractions over three years old have been destroyed. The court notated that Case No. [REDACTED] had been concluded, closed, and destroyed. Included with the letter is a copy of a computer printout that shows: "Case #: [REDACTED] Violations: 148(A) PC [resisting arrest, a misdemeanor]; File Date: 8/29/93; Plea Date: 1/1/00; Disp Date: 10/21/93; Dispo Codes: GJ [probation-jail]."

Counsel's assertion that the applicant was convicted of only one misdemeanor is not persuasive. The destruction of court records is not evidence that conviction(s) had been dismissed. Further, despite the destruction of the criminal records for No. 3 above, the court record shows that the applicant was convicted of this offense and he was sentenced to probation and jail time. Additionally, the applicant has failed to submit the final court disposition of his arrest for willfully resisting/delaying on October 25, 1993, as requested by the director.

Accordingly, the applicant is ineligible for TPS due to his record of at least two misdemeanor convictions and because he failed to provide the final court disposition of his arrest on October 25, 1993. Section

244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, 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.