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U.S. Citizenship
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Services

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JUN 06 2005

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 01 171 53079]

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 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 N. Gomez for

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 (AAO) 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 after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

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.

The record reveals the following offenses:

- (1) On March 12, 2000, the applicant was arrested in Los Angeles, California, and charged with theft in violation of section 484(a) PC, a misdemeanor.
- (2) On December 16, 2000, the applicant was arrested in Los Angeles, California, and charged with petty theft with a prior conviction in violation of section 484(a) PC, a misdemeanor.

On November 22, 2003, the applicant was requested to provide the final court disposition of these arrests. In response, the applicant provided the following:

- (1) a Notice to Appear issued by the Los Angeles County Sheriff's Department on July 31, 2001, related to the following motor vehicle violations: 27153 VC - EXCESSIVE EXHAUST and 12500 VC - UNLICENSED DRIVER;
- (2) a Court Order and Agreement for Attorney Fees/Restitution Fine, signed by the applicant on March 14, 2000;
- (3) a property receipt relating to the applicant's arrest on March 12, 2000, on the charge of petty theft in violation of section 484(a) PC; and,

(4) a Los Angeles Consolidated Booking Form relating to the applicant's arrest on December 16, 2000, on the charge of petty theft with a prior conviction in violation of section [REDACTED] PC, a misdemeanor.

However, the applicant did not provide the final court disposition of her arrests as requested, and the director denied the TPS application.

On appeal, the applicant provides copies of the final court disposition of her charges. On March 14, 2000, the applicant was convicted in the Superior Court of California, County of Los Angeles, of theft of property, in violation of section 484(a) PC, a misdemeanor. On December 19, 2001, the applicant was convicted in the Superior Court of California, County of Los Angeles, of petty theft with a prior conviction in violation of section [REDACTED] PC, a misdemeanor.

The applicant is ineligible for TPS due to her record of two misdemeanor convictions, as detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The record also does not contain sufficient evidence to establish the applicant's identity and nationality. Therefore, the application also must be denied for these reasons.

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.