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U.S. Department of Homeland Security
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Washington, DC 20529



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

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 17 2005

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:

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.

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

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 the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional 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 February 25, 1999, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 15, 1999), the applicant was convicted of burglary, 459 PC, a misdemeanor. He was placed on probation for a period of 2 years under the condition that he serve 30 days in the county jail, and pay \$100 in fines and costs.
- (2) The Federal Bureau of Investigation fingerprint results report shows that on May 23, 1995, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for driving under the influence of alcohol/drugs resulting in bodily injury. The applicant submitted the booking and identification record of this arrest reflecting that the applicant was arrested on May 23, 1995, and charged with "23153(a) VC - DUI," a felony. The final disposition of this arrest was not included on this report.

On appeal, the applicant asserts that he was not convicted of a misdemeanor 23152(a) VC (No. 2 above). He states that he is submitting letters and a DMV printout stating that there was "no DUI charge or conviction recorded, re: Porfirio [REDACTED]. He submits: (1) a letter from the Office of the City Attorney, County of Los Angeles, indicating that they have searched their records and are unable to locate a case or conviction involving a DUI charge against Mr. [REDACTED] from 1995; (2) a letter from the Los Angeles Department of California Highway Patrol indicating that they cannot comply with the request for a copy of a 1995 arrest report regarding Mr. [REDACTED] because their "retention policy for Misdemeanor Arrests Reports is two years plus current year. All 1995 reports have been destroyed and we cannot verify that Mr. [REDACTED] was arrested by this agency;" and (3) the California Department of Motor Vehicles "H6" report.

It is noted that the documents furnished by the applicant indicating that searches were made are all under the name of [REDACTED] rather than "[REDACTED]" the name used when the applicant was arrested on May 23, 1995. It is further noted that the DMV "H6" report shows that the applicant was issued a driver's license on October 23, 1995, after the date of the arrest; therefore, the H6



report is not relevant in this case. Furthermore, the fact that criminal records are destroyed is not evidence that arrests and/or convictions have been dismissed.

Accordingly, 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).

It is noted that removal proceedings were administratively closed on April 2, 2002, to allow the applicant to apply for TPS.

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.