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

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FILE: [REDACTED]
[EAC 01 232 61246]

Office: VERMONT SERVICE CENTER

Date: MAR 28 2005

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.

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. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant submits a statement.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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, now, the Secretary of the Department of Homeland Security (the Secretary), 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 record reveals the following offenses:

1. On May 17, 2000, in the Fairfax General District Court, Herndon, Virginia, Case No. [REDACTED] (arrest date March 21, 2000), the applicant was convicted of disorderly conduct, 14-17 Virginia Code, a misdemeanor. He was sentenced to 30 days in jail, and ordered to pay the total of \$350 in fines and costs.
2. On May 4, 2001, in the Prince William County General District Court, Manassas, Virginia, Case No. [REDACTED] the applicant was convicted of unlawfully changing his name or assuming another name, 18.2-504.1, a misdemeanor. He was ordered to pay fine in the amount of \$100.
3. On January 15, 2000, in the Fairfax County General District Court, Docket No. [REDACTED] the applicant, under the name of [REDACTED] was indicted for felonious assault/malicious wounding, 18.2-51 Virginia Code, a felony. On February 14, 2000, a "nolle prosequi" was entered on the case.
4. On January 14, 2000, in the Fairfax County General District Court, Docket No. [REDACTED] Case No. [REDACTED] the applicant, under the name of [REDACTED] was indicted for felonious assault/malicious wounding, 18.2-51 Virginia Code, a felony. On February 14, 2000, a [REDACTED] was entered on the case.

5. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on June 8, 1999, in Herndon, Virginia, the applicant was arrested and charged with assault and battery-family member. The court's final disposition of this arrest is not contained in the record although the applicant was requested on April 28, 2003, to submit the final court disposition of all arrests.

6. The FBI report shows that on May 26, 2000, in Fairfax, Virginia, the applicant was arrested and charged with assault and battery, and that the applicant was subsequently convicted of this charge. The applicant, however, failed to submit the final court disposition of this arrest.

7. The FBI report shows that on March 31, 2001, in Manassas, Virginia, the applicant was arrested and charged with 2 counts of contempt of court. The report shows that the applicant was subsequently convicted of both counts. The applicant, however, failed to submit the final court disposition of this arrest.

Pursuant to a letter dated April 28, 2003, the applicant was requested to submit the final court disposition for each and every charge against him. In response, the applicant submitted final court dispositions of charges listed in Nos. 1, 2, 3, and 4 above. The director determined that the applicant was ineligible for TPS based on his two misdemeanor convictions.

On appeal, the applicant apologizes for his wrongdoing and requests that he be given another chance. No additional evidence was furnished.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions detailed above, and because he failed to provide the final court dispositions of his arrests detailed in Nos. 5, 6, and 7 above. 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 for this reason 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.