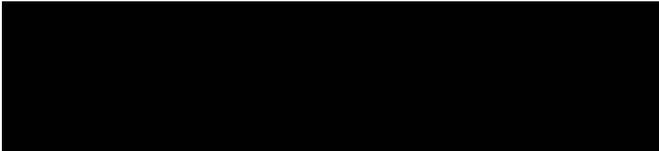


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FILE:



OFFICE: Vermont Service Center

DATE: JUN 27 2006

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IN RE:

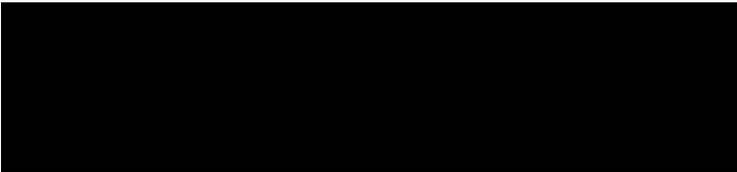
Applicant:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application 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 failed to provide the final court dispositions of the charges relating to his criminal record.

On appeal, counsel, on behalf of the applicant, submits evidence in support of his eligibility for TPS.

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.  
8 C.F.R. § 244.1.

The Federal Bureau of Investigation (FBI) fingerprint results report reveals that the applicant was arrested for the following offenses in California:

- (1) On October 21, 1994, the applicant was arrested and charged with “Embezzlement by Employee” by the Santa Monica Police Department. The FBI report also reflects that the applicant was convicted of Grand Theft and sentenced to 12 months in jail; and,
- (2) On April 28, 1997, the applicant was arrested and charged with “Battery on Person” by the Los Angeles Police Department.

Pursuant to a letter dated December 15, 2004, the applicant was requested to submit legible copies of the final disposition regarding the applicant’s arrest as detailed in No. 2 above. The director denied the application on April 14, 2005, because the applicant did not submit the requested evidence regarding his past arrests in order to establish his eligibility for TPS.

On appeal, counsel states that the applicant had to obtain the requested documentation directly from the Los Angeles Police Department (LAPD) and that the policy of the LAPD is to forward the information directly to

CIS. Counsel further adds that it may take more than 6 weeks to complete the request. In addition, counsel states that the applicant's arrest for Battery on April 28, 1997, was never filed with the court. Counsel also provides, on appeal, a letter from the Chief of Police of the Los Angeles Police Department reflecting that the applicant was arrested and charged with "Battery on Person" and incarcerated from April 29, 1997 to April 29, 1997. The letter also indicates that the applicant was released because of "Prosecutor Prefiling Deferral" and that no case filing information was found in the Los Angeles County.

The record of proceedings contains copies of the previously submitted arrest report and disposition from the LAPD reflecting that applicant was arrested and charge with Battery on April 29, 1997. However, the record does not contain of any information regarding the final disposition as a result of the applicant's arrest. Generally, in the instance of a pre-filing deferral, the case is filed, but no further disposition is entered until completion of a diversionary program. It is also noted that the applicant has also used an alternative birth date of June 11, 1970, as reported to the FBI. To date, the applicant has failed to provide any records from the court that would suggest he had completed the terms of his diversion or that the charge had been dismissed.

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). Therefore, the applicant remains ineligible 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.