

Verifying data deletion in
[redacted]
[redacted]

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[redacted]

M1

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 01 226 52366]

AUG 02 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:

[redacted]

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 found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On July 7, 1997, in the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] (arrest date March 18, 1997), the applicant was convicted of petty theft, 484/488 PC, a misdemeanor. She was placed on probation for a period of 2 years, and ordered to pay \$405 in fines and costs.
- (2) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on October 9, 1996, in Sunnyvale, California, the applicant was arrested for the misdemeanor offense of assault/battery on a person. The final court disposition of this arrest is not contained in the record.

On February 25, 2003, and again on August 2, 2003, the applicant was requested to submit the final court dispositions of her arrests listed in Nos. 1 and 2 above, including any and all arrests in the United States. Because the applicant, in response, failed to provide the court disposition of all of her arrests, the director denied the application on September 17, 2003.

On appeal, counsel asserts that the applicant was convicted of only one misdemeanor, and that she was under the belief that she had complied with the director's requests. She states that the "Municipal Court of Sunnyvale had been closed in October 2003, and Ms. [REDACTED] file had been transferred to the Palo Alto Municipal Court. For this reason, the court experienced a delay in locating records." Counsel submits the court disposition of the applicant's arrest detailed in No. 1 above. She also submits a letter from the Sunnyvale Department of Public Safety, Sunnyvale, California, indicating that a local police records check reveals that [REDACTED] has a criminal record within our city;" however, the letter contains no further

information about the applicant's criminal record in Sunnyvale. There is no evidence in the record to suggest that this arrest relates to No. 2 above.

The applicant has failed to provide the final court disposition of her arrest detailed in No. 2 above. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

It is noted that on September 20, 2001, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.