

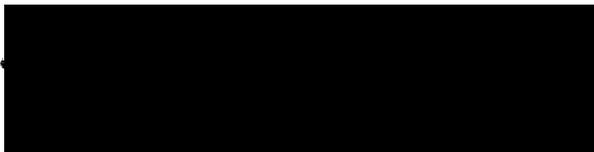
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
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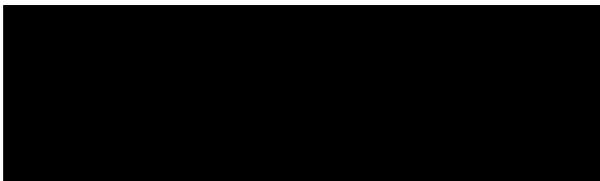
FILE: [REDACTED]
[WAC 01 198 53789]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 12 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:



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. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 for 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.
8 C.F.R. § 244.1.

The record reveals the following offenses:

1. On December 27, 1995, the applicant was arrested in La Habra, California, under the name "[REDACTED]" and charged with petty theft.
2. On December 8, 1995, the applicant was arrested in Santa Ana, California, under the name "[REDACTED]" and charged with petty theft.

Pursuant to a letter dated February 17, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. She was also requested to submit evidence to establish her identity and nationality and evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted evidence of identity and nationality, evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and a criminal record check from the Superior Court of California, County of Orange, indicating that no criminal record was found for "[REDACTED]" date of birth July 8, 1974, for the period from March 5, 1997 through March 5, 2004.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 31, 2004.

On appeal, counsel for the applicant states that the applicant went to the La Habra Police Department and attempted to obtain the record of her arrest, but "[s]he was denied these reports based upon the fact that the arrest reports were in the name of [REDACTED] the name she used when she was arrested." Counsel submits another copy of the same criminal record check from the Superior Court of California, County of Orange, previously submitted in response to the Notice of Intent to Deny.

Counsel further states that he is in the process of requesting the final court disposition of the applicant's arrests from the California Justice Department, and indicates that the court disposition documents will be provided within 90 days. To date, counsel has not provided any court documents reflecting the final court disposition of the applicant's arrests detailed above.

The letter from the Orange County Superior Court is not sufficient to establish that the applicant has not been convicted. The name the court searched for is not the name under which the applicant was arrested. Furthermore, there is no evidence in the file to suggest that this court would have had jurisdiction over the applicant's two arrests.

The applicant has failed to provide any evidence revealing the final court disposition of her arrests detailed 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).

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.