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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 23 2005
[WAC 01 260 52858]

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
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 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.
8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals that the applicant was arrested in San Bernardino, California, on October 13, 2000, and charged with one count of transporting or selling a narcotic controlled substance in violation of section 11352(a) HS, a felony, and one count of conspiracy to commit a crime.

Pursuant to a letter dated February 28, 2003, the applicant was requested to submit the final court disposition for the charges detailed above. In response, the applicant provided a "minute order" from the Superior Court of California, County of San Bernardino, Victorville District, indicating that the applicant pled guilty to the amended charge of opening or maintaining a place for the purpose of unlawfully selling, giving away, or using a controlled substance in violation of section 11366 HS, a misdemeanor. However, this document is not a final court disposition.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on September 18, 2003.

On appeal, counsel for the applicant states that the applicant did not understand what was being requested in the Notice of Intent to Deny and mistakenly submitted a "minute order" from the court in good faith that she was providing the requested evidence. Counsel submits a certified copy of the final court disposition of the applicant's arrest detailed above. The court disposition document indicates that, although the applicant was arrested and charged with transporting or selling a narcotic controlled substance in violation of section 11352(a) HS, a felony, the charge was filed with the court as attempting to transport or sell a narcotic controlled substance in violation of section 664/11352(a) PC, a felony. On April 23, 2001, the applicant pled guilty in the Superior Court of California, County of San Bernardino, Victorville District, to the amended charge of "opening or maintaining a place for the purpose of unlawfully selling, giving away, or using a controlled substance" in violation of section 11366 HS, a misdemeanor.

The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(ii) of the Act as an alien who has been convicted of a violation of a United States law relating to a controlled substance. She is, therefore, ineligible for TPS under 9 C.F.R. § 244.4(a). There is no waiver available to TPS applicants who are inadmissible under section 212(a)(2)(A)(i)(II) of the Act. 8 C.F.R. § 244.3(c)(1). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the application also must be denied for these reasons.

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.