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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 18 2005

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:

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 failed to submit the court records for his arrest for cocaine possession and soliciting prostitution. The director, therefore, denied the application.

On appeal, the applicant submits additional court records for his arrests.

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.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt 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 U.S.C. § 802).

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(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On March 10, 1995, in the District Court of Maryland, Case No. [REDACTED] the applicant was charged with theft over \$300. On May 30, 1995, a "nolle prosequi" was entered on the case.

2. On September 3, 1995, in Hyattsville, Maryland, the applicant was arrested and charged with (1) possession with intent to distribute cocaine, and (2) possession of cocaine. The court's final disposition of this arrest is not contained in the record.
3. On May 25, 1996, in Maryland, Case No. [REDACTED] the applicant was arrested and charged with (1) possession of burglary tools, and (2) concealing a deadly weapon. On October 18, 1996, a "nolle prosequi" was entered on the case.
4. On September 13, 1998, in Washington, DC, the applicant was arrested and charged with prostitution-sexual solicitation. The court's final disposition of this arrest is not contained in the record.
5. On December 19, 2002, in the District Court of Maryland for Prince George's County, Case No. [REDACTED] was entered on the applicant's charges for possession of controlled dangerous substance-not marijuana.

The applicant, on appeal, submits a criminal history request (clearance letter) from the Metropolitan Police Department, Washington, DC, indicating that a "name file search" was conducted on April 11, 2002, and no record was found regarding the applicant. It is noted, however, that the clearance letter states: "The Metropolitan Police Department does not guarantee either the accuracy of the record or that the individual whose record is furnished is actually the same individual whose record was requested. To obtain accuracy, the record of the Court involved should be examined. Positive identification can only be determined by comparable fingerprints." The record shows that a name search only, rather than a fingerprint search, was conducted by the Metropolitan Police Department. Furthermore, the applicant failed to obtain the record of the Court where the case (No. 4 above) was heard.

Although the applicant was requested on February 13, 2002, to submit final court dispositions of all charges against him, he failed to submit the final dispositions for Nos. 2 and 4 above. Convictions of these charges may render the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), or 212(a)(2)(C) of the Act. However, the applicant failed to submit the final court dispositions of all his arrests as requested by the director.

The applicant is, therefore, ineligible for TPS based on his failure to comply to the director's request to submit the final court dispositions of all his arrests. Accordingly, the director's decision to deny the TPS application will be affirmed.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.