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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 17 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, 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 the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant resubmits court dispositions of his arrests.

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.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on November 13, 1990, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for trespass-injure property. The final court disposition of this arrest is not contained in the record.
- (2) On June 17, 1991, in the Municipal Court of Los Angeles, Hollywood Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 15, 1991), the applicant was convicted of vandalism, 594(a) PC, a misdemeanor. He was placed on probation for a period of 12 months, under the condition that he serve 3 days in the county jail and perform 40 hours of community service. Because the applicant violated the terms of his probation, on February 23, 1993, the court revoked and reinstated the applicant's probation, with modifications that he serve 30 days in the county jail, consecutive to Case No. [REDACTED]. The court documents relating to the applicant's conviction under Case No. [REDACTED] is not contained in the record.
- (3) The FBI report shows that on February 2, 1993, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for attempted burglary. The FBI report further shows that the applicant was subsequently convicted of disorderly conduct, loitering on a private property, 647(g) PC, a misdemeanor. The final court disposition of this offense is not contained in the record.
- (4) On September 20, 1993, in the Municipal Court of Los Angeles, Hollywood Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date September 19, 1993), the applicant was indicted for Count 1, trespass: injure property, 602(j) PC, a misdemeanor; and Count 2, battery, 242 PC, a misdemeanor. The applicant was subsequently convicted of Count 1. He was placed on probation for a period of 24 months, with condition that he serve 24 days in the county jail. Count 2 was dismissed.

On November 21, 2003, the applicant was requested to submit the final court dispositions of all arrests in the United States. The applicant, in response, furnished the court documents for the June 17, 1991 and September 20, 1993 convictions (Nos. 2 and 4 above). Because he failed to submit the court dispositions of all his arrests, including Nos. 1 and 3 above, the director denied the application on March 2, 2004.

On appeal, the applicant resubmits the court documents for Nos. 2 and 4 above.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions and because he failed to provide the final court dispositions of his arrests detailed in Nos. 1, 2 (Case No. [REDACTED], and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The FBI report shows that the applicant was placed in removal proceedings:

- (1) On November 18, 1990, in Los Angeles, California, and voluntarily returned to Mexico on the same date.
- (2) On October 7, 1993, in Los Angeles, California, File No. [REDACTED] name used: [REDACTED]
- (3) On February 1, 2001, in Del Rio, Texas, name used: [REDACTED]

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.