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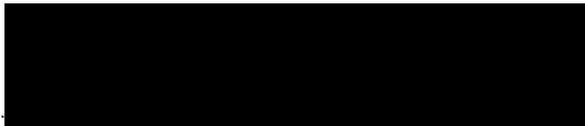
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 24 2005**
[WAC 01 172 51839]

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: 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. 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, 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.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On September 23, 1993, the applicant was charged with failure to leash a pet in violation of section 4.04.150 SMM, a misdemeanor. On October 22, 1993, she was convicted of this charge in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California.

- (2) On April 15, 1998, the applicant was arrested in Los Angeles, California, under the name [REDACTED] and charged with willful cruelty to a child, a misdemeanor.

Pursuant to a letter dated January 20, 2004, the applicant was requested to submit the final court disposition for the charges detailed in (2) above. She was also requested to provide evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. She also provided a court document relating to a probation hearing in the Superior Court of California, County of Los Angeles. (Case Number [REDACTED]) It is noted that the applicant provided only pages 7 and 8 from the eight-page court disposition and the pages submitted do not identify the charge of which the applicant was convicted.

On March 8, 2004, the applicant was requested to provide all documents relating to her prior removal proceeding; information relating to her dates of re-entry into the United States after removal; her prior arrest and/or conviction record since her entry into the United States; evidence of any approvals of petitions filed on her behalf; the final court disposition of all arrests since her entry into the United States; and, a copy of her California H-6 department of Motor Vehicles (DMV) record. In response, the applicant provided a photocopy of the same court probation hearing document previously submitted in response to the notice dated January 20, 2004. She also submitted her California DMV Form H-6 printout. According to this document, the applicant was found guilty of failure to yield to a pedestrian in a crosswalk in violation of section 21950 VC.

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 2, 2004.

On appeal, the applicant states that she has submitted all requested documents. She submits copies of documents previously submitted in response to both Notices of Intent to Deny.

The record confirms that the applicant has been convicted of one misdemeanor detailed in (1) above. She was subsequently arrested on April 15, 1998, and charged with a second misdemeanor. Although the applicant has provided copies of various documents indicating that she completed a court-mandated parenting class, paid restitution fees, and performed community service in relation to Case Number [REDACTED] and that her probation was subsequently terminated because she had completed all court requirements, she has not provided evidence that Case [REDACTED] relates to her arrest on April 15, 1998. Therefore, it is not possible to determine from examination of the record whether these documents relate to the arrest detailed in (2) above.

Since the applicant has failed to provide any evidence revealing the final court disposition of her arrest detailed in (2) above, she 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 the applicant previously filed Form I-589, Request for Asylum in the United States, on August 27, 1992. Her application was denied on December 22, 1993, and she was referred for a removal hearing before an Immigration Judge.

On April 19, 1994, an Immigration Judge in Los Angeles, California, ordered the applicant deported in absentia.

On September 10, 1994, the District Director, Los Angeles, issued a Form I-166 notice ordering the applicant to appear at the Los Angeles District Office for removal to El Salvador on September 27, 1994, along with a Form I-205, Warrant of Deportation. According to the record, the applicant failed to appear to be deported as ordered.

It is noted that the applicant indicated on the Form I-821, Application for Temporary Protected Status, that she last entered the United States on January 22, 1995. Therefore, it appears that she departed the United States under an order of deportation, even though she failed to appear at the Los Angeles District Office to be deported on September 27, 1994.

It is further noted that the applicant filed a Form I-212, Application to Reenter After Deportation, on October 11, 2000. There is no indication in the record that the application has been adjudicated.

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.