

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

MI

FILE: [REDACTED]  
[WAC 01 172 50224]

OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 25 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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 he found that the applicant had failed to submit requested court documentation relating to his 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.

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.

The record reveals the following offenses:

- (1) On October 20, 2000, in the Superior Court, Wiley W. Manuel Courthouse, County of Alameda, California, Docket No. [REDACTED] (arrest date October 4, 2000), the applicant was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On January 1, 2001, the applicant was convicted of Count 1. He was placed on conditional sentence for a period of 24 months, ordered to spend one day in the county jail, pay \$806 in fines and costs, and attend and complete “DUI Wet Reckless School.” Count 2 was dismissed.
- (2) On October 22, 2001, in the Superior Court of California, County of Contra Costa, Case No. [REDACTED] (arrest date September 13, 2001), the applicant was indicted for Count 1, driving under the influence of alcohol or drugs, 23152(a) VC, a misdemeanor; and Count 2, unlicensed driver, 12500(a) VC, a misdemeanor. The final disposition of this arrest is not reflected on the court document furnished by the applicant. The “Clerk’s Docket and Minutes” shows that the defendant’s motion for continuance was granted and that the defendant (applicant) must appear in court on May 21, 2003. The applicant has failed to submit a complete court document to show the outcome of this hearing.

- (3) The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant (name used: [REDACTED]) was arrested on September 13, 2001, in [REDACTED] California, for Count 1, driving under the influence of alcohol/drug with prior; Count 2, driving with .08 percent blood alcohol level or more, with prior; Count 3, driving without a license; and Count 4, "plea to 23103 in lieu of." The court's final disposition of this arrest is not contained in the record.
- (4) On April 16, 2002, in the Superior Court of the State of California, County of Contra Costa, Case No. [REDACTED] (arrest date November 19, 2001), the applicant was indicted for possession of a controlled substance, H&S 11350(a), a felony. On June 5, 2002, the applicant entered a plea of "no contest." The court ordered the criminal proceedings suspended and entry of judgment deferred, and placed the applicant on Diversion under section 1000 of the California Penal Code for a period of 18 months. On September 23, 2002, the court ordered the Diversion terminated and the case dismissed. Diversion in California, pursuant to section 1000.2 PC, is not a conviction for immigration purposes. The applicant, in this case, successfully completed diversion, and the case was dismissed.
- (5) The FBI report shows that on November 19, 2001, in San Pablo, California, the applicant was arrested for "THRTN CRIME, INT, TERRORIZE." The final court disposition of this arrest is not contained in the record.

Pursuant to a notice of intent to deny dated January 30, 2003, the applicant was requested to submit the final court disposition of all arrests, including the arrests listed in the FBI report. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on April 3, 2003.

On appeal, the applicant submits the court documents as detailed above. Although the applicant asserts that the arrest of November 19, 2001 (No. 2 or No. 3 above) is still pending, he failed to submit any evidence to establish his claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant has failed to provide evidence revealing the final court dispositions of his arrests detailed in Nos. 2, 3, and 5 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his 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.