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

MI



FILE: [REDACTED]  
[EAC 01 207 54122]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 09 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center and is before the Administrative Appeals Office (AAO) 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 failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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) On November 25, 2000, the applicant was arrested by the Los Angeles, California, Police Department and charged with DUI Alcohol/Drugs.
- (2) On March 4, 2001, the applicant was arrested by the Hyattsville, Maryland, Police Department and charged with Assault 1<sup>st</sup> degree.
- (3) On March 4, 2001, the applicant was arrested by the Hyattsville, Maryland, Police Department and charged with Assault 2<sup>nd</sup> degree.

On March 16, 2002, and again on April 24, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The record reflects that the applicant failed to respond to the first request. In response to the second request, the applicant submitted photocopies of the following: (a) an undated court continuance slip from the Metropolitan Branch Court, Los Angeles, California, indicating that the applicant was to complete an Alcohol Program by October 31, 2002; (b) a criminal system inquiry charge/disposition display from the District Court of Maryland, dated May 6, 2003, indicating that charge No. 2, above, was NP (nolle prosequi) on April 17, 2001; and, (c) a Certificate of Attendance, issued on February 24, 2003, indicating that the applicant attended a substance abuse treatment program.

The director determined that the documentation submitted only addressed one (No. 2, above) of the three charges. The director concluded that the applicant had failed to submit all of the evidence necessary for the proper adjudication of the application (i.e. the dispositions of charges No. 1 and No. 3, above) and denied the application on August 20, 2003.

On appeal, the applicant submits an additional document, confirming that No. 2, above, was nolle prosequi. The applicant also submits a document, dated July 17, 2003, from the Municipal Court of Los Angeles, Metro Branch Judicial District, indicating that with regard to No. 1, above, the applicant was convicted on November 27, 2000, of a reduced charge of Reckless Driving, in violation of section 23103 of the Vehicle Code, a misdemeanor. (Docket # [REDACTED]) In addition, the document reflects that the applicant failed to appear for required court appearances, and that a bench warrant was issued in the amount of \$15,000 on April 30, 2003.

The applicant has been convicted of at least one misdemeanor (Reckless Driving). The applicant has failed to provide any evidence revealing the final court disposition of No. 3, above. In addition, he has failed to submit any documentation regarding the outcome of his failure to appear for court appearances and the issuance of a bench warrant in the amount of \$15,000.

It is concluded that 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). Consequently, the director's decision to deny the application will be affirmed.

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.