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U.S. Department of Homeland Security
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U.S. Citizenship
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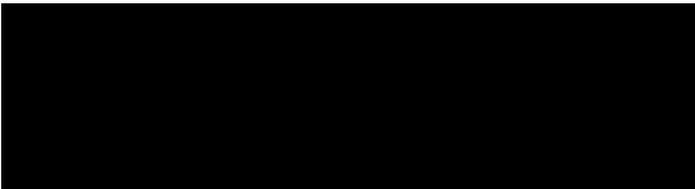
FILE: [Redacted]
[WAC 01 287 55909]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

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:



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 the applicant had been convicted of two misdemeanors.

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.

The record reveals the following offenses:

- (1) On September 2, 1997, the applicant pled guilty in the Superior Court of California, County of Monterey, to petty theft in violation of section 484(a) PC, a misdemeanor. (Case No. MS159078B).
- (2) On November 19, 2003, the applicant was convicted in the Superior Court of California, County of Monterey, of the amended charge of battery on spouse, cohabitant, or former spouse or non-cohabitant in violation of section 243(e) PC, a misdemeanor. (Case No. MS217965A). Four other charges, inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor and three counts of cruelty to a child by inflicting injury in violation of section 273(a)(B) PC, all misdemeanors, were dismissed in the furtherance of justice.

On appeal, the applicant states that she is enclosing the final court disposition of her two arrests. She submits copies of the final court dispositions of her arrests detailed above.

The applicant is ineligible for TPS due to her record of two misdemeanor convictions, detailed in Nos. (1) and (2) above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of her application for TPS that she had not been convicted of two misdemeanors and that she had never been arrested. This misrepresentation of a material fact in an

application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

It is noted that the applicant filed a Form I-589, Request for Asylum in the United States, on May 26, 1993. On December 15, 1998, her application was denied by the Asylum Office in San Francisco, California, and she was referred for a deportation hearing before an Immigration Judge.

On April 4, 2000, an Immigration Judge in San Francisco, California, denied the applicant's request for asylum and for withholding of removal, and granted the applicant the privilege of voluntary departure on or before June 3, 2000, with an alternate order of deportation if the applicant failed to depart in compliance with the grant of voluntary departure. On April 21, 2000, counsel for the applicant filed an appeal from the decision of the Immigration Judge with the Board of Immigration Appeals (BIA). There is no indication in the record of proceeding that the BIA has issued a decision on this appeal.

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.