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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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MM



FILE:



[SRC 01 257 55984]

Office: TEXAS SERVICE CENTER

Date:

NOV 29 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, Texas 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 failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant acknowledges that on February 3, 2000 he was arrested for the possession of marijuana. The applicant states that his punishment included forfeiture of a \$500 bond that he had posted and that he received credit for three days of jail time that he had served while he was waiting to obtain the bond. The applicant further states that: "I requested a document certifying to the sentence but I was informed that they were unable to provide me with such a document." The applicant indicates that the Attorney General may waive a violation relating to a controlled substance when the charge reflects a single offense of simple possession of 30 grams or less of marijuana and indicates that the amount of marijuana found in his possession had to be less than 62.08 grams as he was charged with the possession of less than 2 ounces of the substance.

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 Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on February 3, 2000 for the possession of marijuana in an amount less than (" $<$ ") 2 ounces by the Sheriff's Office in Richmond, Texas.

On August 18, 2004, the applicant was requested to submit the final court disposition of his arrest for the possession of marijuana on February 3, 2000.

On appeal, the applicant submits a "Felony Record Search" dated September 10, 2004 from [REDACTED] the Dallas County District Clerk in Dallas, Texas. Mr. [REDACTED] certifies that after a search of the District Criminal Court indexes of Dallas County, Texas, they were unable to locate any charges or convictions filed against the

applicant during and including the year of 1973 through September 9, 2004. The applicant also submits a letter dated October 15, 2004 from [REDACTED] the Records Clerk for the Sheriff's Office in Fort Bend County, Texas. The Records Clerk states that the applicant was arrested on February 3, 2003 for the "poss marij <2 oz county court bond \$500."

The applicant has forwarded a felony record search from the District Criminal Court in Dallas Texas for consideration. This search is of limited value because the crime that he was arrested for could have been considered a misdemeanor in that jurisdiction. Additionally, he was arrested by officers of the Sheriff's Office in another county. As Dallas County is not the only county in the Dallas area, the applicant has failed to establish that the Dallas Court would have had jurisdiction over his offense

It is noted that even had the applicant established that he had been convicted of the possession of less than two ounces of marijuana, his application could not have been approved. 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. There is no waiver available to an alien found inadmissible under this section. *See* 8 C.F.R. § 244.3(c)(1).

After review of the evidence forwarded by the applicant on appeal, it is determined that although he has made efforts to do so, he has failed to provide the final court disposition of his February 3, 2000 arrest for the possession of marijuana. Therefore, 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). Accordingly, the director's decision to deny the application will be affirmed.

It is noted that on November 27, 1999, an Immigration Judge in Houston, Texas ordered the applicant removed from the United States.

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.