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**U.S. Citizenship
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FILE: [REDACTED]
[EAC 02 178 52337]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 30 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. 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 the applicant failed to respond to the director's request for final court dispositions of every charge against him.

On appeal, the applicant asserts that he has not been convicted of any felony or misdemeanor crimes and submits final court dispositions stemming from some of his arrests in Fairfax County, Virginia.

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/she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he/she admits having committed such crime, or if he/she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses listed under the name [REDACTED]

- (1) On February 17, 2002 the applicant was arrested in Fairfax, Virginia, on a charge of drunk in public or profane, final court disposition unknown;
- (2) On December 10, 2000 the applicant was arrested in Fairfax, Virginia, on a charge of aggravated assault on a police officer, the charge was dismissed on February 21, 2001;
- (3) On May 27, 2001 the applicant was arrested in Fairfax, Virginia, on a charge of drunk in public or profane, final court disposition unknown;
- (4) On March 30, 1999 the applicant was arrested in Fairfax, Virginia, on a charge of malicious wound/maim felony, final court disposition unknown;
- (5) On March 30, 1999 the applicant was arrested in Fairfax, Virginia, on a charge of assault-simple, the charge was dismissed on May 17, 1999; and,
- (6) On March 30, 1999 the applicant was arrested in Fairfax, Virginia, on a charge of burglary, no other description, the charge was dismissed on May 17, 1999,

On appeal, the applicant reasserts his claim of eligibility for TPS.

The applicant has failed to provide a final court disposition for the charges detailed in Nos. 1, 3, and 4 above. Therefore, the AAO is unable to determine whether the applicant has been convicted of a felony or at least two misdemeanor convictions, which would make him ineligible for TPS. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States as required by 8 C.F.R. §§ 244.9(2)(b) and (c). For this additional reason, the application will be denied.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.