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

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[redacted]

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE MAR 22 2006
[EAC 02 187 50359]

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:

[redacted]

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 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 she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for 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.
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> *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.
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> 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. 8 C.F.R. § 244.1.

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.

The record reveals the following offenses:

1. On June 17, 1995, the applicant was arrested in Woodbridge, New Jersey, and charged with: (1) one count of receiving stolen property in violation of section 2C:20-7 of the New Jersey Criminal Statute; (2) one count of resisting arrest in violation of section 2C:29-2A of the New Jersey Criminal Statute; (3) one count of attempting to elude police in violation of section 2C:2902B of the New Jersey Criminal Statute; and, (4) one count of possession of a controlled dangerous substance or analog in violation of section 2C:35-10A of the New Jersey Criminal Statute. In response to a Notice of Intent to Deny dated July 17, 2003, counsel for the applicant submitted a certified disposition document from the Municipal Court of Woodbridge, Woodbridge, New Jersey, indicating that Counts (1) and (2) were merged and the applicant was found guilty of the merged charge pursuant to section 15.3 of the New Jersey Criminal Statute.

2. On August 22, 2000, the applicant was arrested by the United States Secret Service in Brooklyn, New York, and charged with one count of credit card fraud in violation of 18 U.S.C. § 1029 and one count of fraud by wire in violation of 18 U.S.C. § 2608. (Docket # In response to the Notice of Intent to Deny dated July 17, 2003, counsel submitted a printout from the United States District Court, Eastern District of New York, indicating that the charge of intent to defraud, have control or custody of access device

making equipment in violation of 18 U.S.C. § 1029(a)(4) was dismissed on government motion on August 11, 2003, and the case was terminated as of that date. The applicant also submitted a court document dated August 7, 2-00-3, stating that his warrant was recalled and the case dismissed. Neither of the documents submitted by the applicant mentions the second charge of fraud by wire.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on March 29, 2004. Specifically, the director stated that the applicant had not provided the final court disposition of No. 2 above.

On appeal, counsel for the applicant contends that the director erroneously denied the application because the applicant failed to submit the final court disposition of his arrest in 2000. Counsel states that the applicant previously submitted a court document indicating that the charges detailed in No. 1 above were dismissed by the court without prejudice on August 11, 2003. Counsel submits another copy of the same court document dated August 7, 2003.

The court document from the United States District Court (No. 2 above) is not a final court disposition document. The document does not reflect the applicant's plea or the finding of the court as to the applicant's guilt or innocence of the charges detailed in No. 2 above; rather, it appears to indicate that the charges were dismissed by the court without prejudice in 2003 after the applicant had complied with conditions imposed by the court. The nature of these "conditions" is not clear. It is noted that the FBI printout suggests that the applicant was convicted of both charges detailed in No. 2 above and was sentenced to a one-year supervised release for the period from November 13, 2000 to November 12, 2001.

The applicant has failed to provide a court document revealing the final court disposition of his arrest detailed in No. 2 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). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant currently has a pending Form I-485, Application to Register Permanent Residence or Adjust Status, before Citizenship and Immigration Services (CIS).

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.