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

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FILE: [REDACTED]  
[EAC 01 225 56963]

OFFICE: Vermont Service Center

DATE: JUL 05 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's TPS status was revoked and the re-registration was denied by the Director, Vermont Service Center.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 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 revoked the applicant's TPS status because he found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, the applicant asserts the director legally erred in revoking her TPS.<sup>1</sup>

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;

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<sup>1</sup> The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

(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.  
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 January 8, 2005, the applicant was arrested for Grand Larceny, Value of Property > \$1000, a Class E Felony, by the Suffolk County Police Department, New York.

Pursuant to a letter dated April 3, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to this request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 5, 2006.

On appeal, the applicant asserts that the director legally and factually erred in revoking her TPS, in support of her appeal she submits a disposition for a charge of Petit Larceny.

The director did not legally or factually err in his decision, as the decision was based on the record as it was constituted at the time. The applicant, although retaining counsel, fails to articulate how the disposition submitted on appeal for a misdemeanor petit larceny arrest relates to the felony charge of Grand Larceny that was revealed through the FBI fingerprinting history. The disposition, which does not have an arrest date, or a docket of actions taken against the applicant, is for a charge of Petit Larceny, and only gives the disposition date of July 13, 2005. Nor does the record indicate that these two charges are related, as there is no evidence of a plea deal or reductions, and the disposition reveals that the applicant was arraigned on Petit Larceny, before any plea bargain reduction might have occurred. The AAO cannot construct assertions or make presumptions on behalf of an applicant where the submitted evidence does not make its relevance clear. In this case, the two charges are not clearly related, and the applicant has not provided the final disposition for the felony charge listed on her criminal record.

The applicant has failed to provide the final court disposition of her arrest detailed above. The applicant is ineligible for Temporary Protected Status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason 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.