



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: VERMONT SERVICE CENTER

Date: **MAY 23 2008**

[EAC 07 23551005, appeal]
[EAC 07 005 85093]

INRE:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont 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 was convicted of two misdemeanors committed in the United States.

On appeal, counsel states the applicant believes the convictions are erroneous and/or vacated. Counsel also states that she would submit a brief and/or additional evidence to the AAO within 30 days; however, she has not done so. Therefore, the record is considered complete.

Section 244(c) of the Act, and the related regulations at 8 C.F.R § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On April 29, 1992, the applicant was convicted of burglary by a Judge of the Municipal Court of the Los Angeles Judicial District in the State of California, a misdemeanor. (Case Number )
- (2) The applicant's National Crime Information Center report dated July 21, 2003, reflects that on April 7, 1994, the applicant was convicted of "242/243 (B) PC-BATTERY PEACE OFFICER PERSONNEL ETC," by a Judge of the Municipal Court in Beverly Hills in the State of California, a misdemeanor. Despite a Citizenship and Immigration Services request, the applicant has failed to provide the actual court disposition of this offense.

Pursuant to a letter dated June 19, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, he submitted a court disposition document for his burglary conviction listed as Item # 1 above. However, he did not submit a court disposition document for the battery charge listed as Item #2 above. The director determined that the applicant had been convicted of both burglary on April 29, 1992 and of battery of a peace officer and/or emergency personnel on April 7, 1994.

On appeal, the counsel states that the applicant believes the convictions are erroneous and/or vacated and that additional evidence would be forthcoming. However, no further documentation has been submitted for the record.

The applicant has failed to provide evidence revealing the final court disposition of his battery charge and probable conviction listed as Item # 2 above. Therefore, the applicant is ineligible for TPS 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 will be **affirmed**, not because he has been convicted of two misdemeanors, but because he has been convicted of one misdemeanor and has failed to provide the final court disposition for his second probable misdemeanor conviction for battery.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Therefore, the application shall be denied for this reason as well.

On March 6, 1986, an Immigration Judge in Los Angeles, **California**, granted the applicant voluntary departure from the United States on or before April 30, 1986, with an alternate order of deportation if the applicant should fail to depart as ordered. There is no evidence in the record that the applicant departed from the United States as required.

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