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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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MA

FILE:

OFFICE: Vermont Service Center

DATE: OCT 30 2008

[REDACTED]  
[EAC 07 178 50723]  
[EAC 08 205 51452 - I-290B]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) 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 he determined that the applicant was ineligible for TPS because the applicant had been convicted of two or more misdemeanors committed in the United States. The director also denied the application because the applicant failed to establish his eligibility for TPS late registration.

On appeal, the applicant asserts his eligibility for TPS and submits a statement in support of his claim.

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.

8 C.F.R. § 244.1.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested on March 14, 2006, by the Pomona Police Department, and charged with “001 Counts of Cruel to Chld, Pos Inj/Dth,” and “001 Counts of Obstruct/etc. Ofcr/Etc.”

On August 28, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. In addition, if convicted, the applicant was also requested to provide evidence showing whether the charge for each arrest was classified as a felony or misdemeanor. In response, the applicant submitted copies of the final court disposition from the Superior Court of California in the County of Los Angeles. The director determined that the applicant was ineligible for TPS because the applicant committed two misdemeanor offenses in the United States. The director also stated that the applicant failed to establish his eligibility for TPS late registration. Therefore, the director denied the application on June 20, 2008.

On appeal, the applicant asserts his eligibility for TPS, and provides a statement regarding the circumstances surrounding his arrest on March 14, 2006.

The first issue in this proceeding is whether the applicant is eligible for late registration.

A review of the record of proceedings reflects that the applicant filed an application for asylum on September 7, 1994, which was referred to an Immigration Judge on January 26, 2007. It appears that this application is still pending. Therefore, the applicant has established his eligibility for late registration under 8 C.F.R. § 244.2 (f)(2), and the director's decision on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for TPS based on his past criminal record.

A review of the court disposition from the Superior Court of California in the County of Los Angeles reflects that on March 16, 2006, the applicant was convicted of "Unlawful Obstruction of Peace Officer," California Penal Code Section 148(a)(1), a misdemeanor; and, "GBI/Death to Child," California Penal Code Section 273a(a), a misdemeanor (Case [REDACTED]). The applicant is not eligible for temporary protected status because he has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is affirmed, and the applicant remains ineligible for TPS.

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.