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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:

[WAC 01 259 60740]

Office: VERMONT SERVICE CENTER

Date:

MAR 03 2005

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 record reveals that the applicant filed a TPS application during the initial registration period on August 2, 2001, under receipt number WAC 01 259 60740. The Director, California Service Center, approved that application on February 18, 2004.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

The director determined that the applicant had been convicted of two misdemeanors in the United States. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has only been convicted of one misdemeanor. Counsel also states that additional documentation would be provided within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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 record reveals the following offenses:

(1) On September 15, 2005, the Ventura, California Police Department arrested the applicant for "G/Theft, S/Labor/Prop \$400+." ([REDACTED])

(2) On September 18, 2005, the Ventura, California Police Department arrested the applicant for "G/Theft, S/Labor/Prop \$400+." [REDACTED]

Pursuant to a letter dated July 6, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant provided the final court dispositions. The dispositions indicate that on September 20, 2005, and again on November 20, 2005, the applicant pled guilty and was convicted of petty theft.

The applicant is ineligible for temporary protected status because of her two misdemeanor convictions. 8 C.F.R. § 244.4(a).

On appeal, counsel states that the applicant has only been convicted of one misdemeanor. According to counsel, the submitted documents have matching agency and case numbers and may in fact be for an infraction, rather than a misdemeanor. Counsel also states that additional documentation would be provided within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete. The cases bear different case numbers, they specifically indicate different offense dates, different Deputy District Attorneys, and different disposition dates.

Furthermore, counsel also states that the offenses may be infractions, rather than misdemeanors. However, both convictions are punishable by a term of no more than six months imprisonment. As stated above, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. Therefore, these convictions are considered to be misdemeanors for TPS purposes.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. In addition, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied for these reasons as well.

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.