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

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N. W.  
Washington, DC 20536



File:



Office: Nebraska Service Center Date:

NOV 18 2003

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.  
*Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Cindy N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center. The case was subsequently reopened on motion at the Nebraska Service Center and the decision of the director was not reversed. 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 indicated on his application that he entered the United States on August 30, 1993, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the record established that the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, counsel asserted that the applicant's conviction record "was not sufficiently serious to warrant a denial of his application."

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that the alien has been convicted of any felony or two misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act.

"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 in Adams County, Colorado:

1. On March 15, 1998, the applicant was arrested for driving under the influence and for careless driving causing injury. (Case #98T3484). On May 22, 1998, the applicant pled guilty to these two misdemeanor offenses and was placed on probation for a period of twelve months.
2. On December 29, 2002, the applicant was arrested for driving under the influence with a blood alcohol level of over 0.2 percent. (Case #03T87). On February 27, 2003, the applicant pled guilty to this misdemeanor. The applicant was placed on probation for a period of one year.

Counsel asserted on appeal that the applicant's convictions were "not sufficiently serious to warrant a denial." However, counsel failed to submit any evidence to suggest that the applicant had not been convicted of misdemeanor offenses. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The burden of proof is upon the applicant to establish that he

meets the above requirements. The applicant is ineligible for temporary protected status because of his record of at least three misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for temporary protected status 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.