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U.S. Citizenship
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Services

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DEC 15 2004

FILE:  Office: CALIFORNIA SERVICE CENTER Date:

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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:
 - (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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The record reflects the following:

1. On April 2, 2002, in the Municipal Court of Citrus Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date January 2, 2000), the applicant, in a 4-count indictment, was convicted of Count 1, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 4, false ID to peace officer, 148.9 PC, a misdemeanor. He was ordered to spend 10 days in the county jail as to both counts. Counts 2 and 3 were dismissed.
2. On May 17, 2002, in the Municipal Court of Citrus Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 28, 2002), the applicant was indicted for 13.18.010 LAO, drinking an alcoholic beverage in public, a misdemeanor. On December 12, 2003, the applicant was convicted of the offense, and he was ordered to pay a total of \$127 in fines and costs.
3. The Federal Bureau of Investigation fingerprint results report shows that on September 1, 1996, the applicant was arrested in Norwalk, California, and charged with assault with a deadly weapon not firearm

or force, great bodily injury likely, a felony. The applicant was requested on November 26, 2003, to submit the final court disposition of this arrest; however, he failed to comply.

On appeal, the applicant requests that his case be accepted notwithstanding his three misdemeanor convictions. He asserts that one conviction was for an extremely minor offense, and that under the petty offense exception, it should not have been held against him. The applicant's convictions listed in Nos. 1 and 2 above are classified as misdemeanors by the state of California and by the city of Los Angeles. While the maximum possible punishment for the offense in No. 2 above is not clear, the misdemeanors cited in No. 1 are each punishable by more than five days of incarceration. Therefore, these convictions constitute misdemeanor offenses.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his three misdemeanor convictions, and because he failed to submit the final disposition of his arrest listed in No. 3 above. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.