



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **DEC 15 2004**

IN RE: Applicant: [Redacted]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and  
Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF PETITIONER:

[Redacted]

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 a felony committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant was indeed convicted of a felony in 1992, but that he has been punished for it, and he has been a model citizen for the past 13 years. Counsel further asserts that, in this case, the "De minimis" exception should apply so as to grant the applicant TPS.

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 --

\* \* \*

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

\* \* \*

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects that on April 29, 1992, in the Superior Court of California, County of Los Angeles, the applicant entered a plea of guilty to transportation/sale of a controlled substance, in violation of the California Health and Safety Code 11352.A, a felony. He was found guilty of the crime, imposition of sentence was suspended and he was placed on probation for a period of 3 years, to spend the first 180 days in the county jail, and ordered to pay \$100 in restitution and \$50 in fine.

The director's conclusion that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his felony conviction is correct.

Furthermore, although not addressed by the director, the applicant's conviction of transportation/sale of a controlled substance renders the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. He may also be inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act as an illicit trafficker in a controlled substance. The record, however, is devoid of the arrest report or the court's charging documents in this case. There is no waiver available to an alien found inadmissible under these sections pursuant to 8 C.F.R. § 244.3(c)(1). Therefore, counsel's assertion that the "de minimis" exception should apply in the applicant's case is without merit. Further, it is noted that the conviction record failed to indicate the controlled substance the applicant was found to be transporting. Although the applicant claimed in his TPS application that he was charged with possession of marijuana, the applicant, in deportation proceeding, admitted to the immigration judge that he was convicted of possession of powder cocaine.

It is further noted that the record of proceeding contains an outstanding Warrant of Removal/Deportation, Form I-205, issued on April 12, 1999, and that the applicant failed to appear at the Los Angeles district office on May 12, 1999, for his enforced departure.

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.