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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 16 2004

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[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, Texas 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 failed to comply to his request to submit final court dispositions of his arrests and convictions. The director, therefore, denied the application.

On appeal, counsel submits copies of court documents regarding the applicant's arrests.

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.

The record reflects the following:

1. On June 12, 2002, in the County Court of Broward County, Florida, Case No. [REDACTED] the applicant was convicted of driving under the influence, a misdemeanor. He was placed on probation for a period of 6 months, ordered to pay the sum of \$561.50 in fines and court costs, and 50 hours in community service.
2. On June 12, 2002, in the County Court of Broward County, Florida, Case No. [REDACTED] the applicant was convicted of Count 1, expired tag; Count 2, unlawful license-tag/sticker attached, and Count 3, driving while license suspended or revoked, a misdemeanor. The applicant was ordered to pay fines and court costs in the amount of \$70 as to Count 2, and \$149 as to Count 3.

The Federal Bureau of Investigation (FBI) report shows that the applicant, under the name of Erivelio Aquino Flores, was arrested for the following in Florida. The final court disposition of the arrests are not contained in the record of proceeding although the applicant was requested on October 10, 2003, to submit the court disposition of all his arrests:

3. Arrested on March 8, 1998, by the Ft. Lauderdale Police Department for (1) driving under the influence, a misdemeanor, and (2) driving under the influence with property damage, a misdemeanor.
4. Arrested on December 18, 2001, by the Broward County Sheriff's Office for (1) failure to appear-Capias, a misdemeanor, (2) failure to appear-Capias, a misdemeanor, (3) failure to appear-Capias, a misdemeanor, and (4) failure to appear-Capias, a misdemeanor.

5. Additionally, the record of the Broward County 17th Judicial Circuit of Florida shows that on December 26, 2001, under Case No. [REDACTED] the applicant was indicted for Count 1, driving while license suspended, a misdemeanor; Count 2, failure to wear safety belt; and Count 3, operating a vehicle with unsafe/improper equipment. The final court disposition of these charges is not contained in the record.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two misdemeanor convictions (Nos. 1 and 2 above), and for failure to submit the final court dispositions of all his arrests as requested by the director. 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.