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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**MI**



DEC 16 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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, Vermont 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, counsel asserts that the director erred factually and legally in denying the TPS application. He further asserts that the applicant has not been convicted of two or more misdemeanors.

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 March 27, 2002, in New York, the applicant was arrested and charged with patronizing a prostitute, in violation of PL 230.03. On May 17, 2002, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED], the applicant entered a plea of guilty to the reduced charge of disorderly conduct, in violation of PL 240.20. He was fined \$100.
2. On July 24, 2002, in the District Court of the County of Suffolk, New York, Docket No. [REDACTED] the applicant was convicted of operating a motor vehicle by unlicensed driver, in violation of VTL 509.1. He was fined \$150.
3. The Federal Bureau of Investigation report, contained in the record of proceeding, shows that on June 8, 2002, the applicant was arrested by the Suffolk County Police Department, Yaphank, New York, for "false personation, a class B misdemeanor." The final court disposition of this offense is not contained in the record.

Although disorderly conduct is classified a "violation," according to section 10.00(3) of the New York State Penal Law, "violation" means an offense for which a sentence to a term of imprisonment of up to fifteen days can be imposed. Likewise, New York VTL 509 states that a violation of any provision of this section (this includes VTL 509.1) "shall be punishable by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment..." Consequently, PL 240.20 and VTL 509.1 are misdemeanors as defined in 8 C.F.R. § 244.1.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two misdemeanor convictions. 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.