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U.S. Citizenship  
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Services

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DEC 17 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 asserts that the two times he was convicted, he was never in jail for more than 40 days, and he does not have any felony in his record. He states that he has been residing in the United States since February 26, 1984, and he has two United States citizen children.

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 July 15, 1992, in the Municipal Court of Los Angeles, California, Case No. [REDACTED] (arrest date June 24, 1992), the applicant was convicted of battery on non-cohabitant or former spouse/etc., 243(e) PC, a misdemeanor. He was placed on probation for a period of 24 months, ordered to spend 10 days in jail, and was assessed a fine.
2. On November 10, 1992, in Los Angeles, California, Docket No. [REDACTED] (arrest date October 17, 1992), the applicant was convicted of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. He was placed on probation for a period of 5 years, and his driver's license was restricted for a period of one year.
3. On June 18, 1996, in the Municipal Court of Los Angeles, California, Case No. [REDACTED] (arrest date June 14, 1996), the applicant was indicted for Count 1, inflicting corporal injury on spouse, 273.5(a) PC; Count 2, violence used against former spouse, 242-243 PC; and Count 3, battery, 242 PC. On June 18, 1996, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, ordered to spend 60 days in jail, pay a total of \$236 in fines and costs, and ordered to enroll and complete one year of domestic violence counseling. Counts 2 and 3 were dismissed.
4. On January 22, 1997, in Los Angeles, California, Docket No. [REDACTED] (arrest date May 30, 1996), the applicant was convicted of driving while license suspended or revoked, 14601.1 VC, a misdemeanor. He was ordered to spend 10 days in jail.

5. The Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on December 16, 2001, in Norwalk, California, and charged with disorderly conduct, drug with alcohol. The final court disposition of this arrest is not contained in the record.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his four 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 record shows that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on February 7, 1997, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about February 4, 1984. On May 21, 1998, an Immigration Judge (IJ) denied the applicant's application for suspension of deportation and application for voluntary departure, and ordered the applicant removed from the United States to El Salvador. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On April 12, 2002, the BIA dismissed the appeal.

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.