

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE:



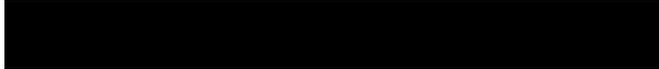
Office: TEXAS SERVICE CENTER

Date:

MAY 03 2004

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:



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 was ineligible for TPS because she had been convicted of one or more felonies or two or more misdemeanors. The director, therefore, denied the application.

On appeal, counsel states that the applicant appeals the director's decision because there is an incorrect assumption that she has a disqualifying felony conviction and disqualifying misdemeanors. She further asserts that the misdemeanor convictions stemmed from one set of facts and circumstances; i.e., one driving under the influence conviction. Counsel submits court records of 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 court records, furnished on appeal, reflect the following:

1. On November 6, 2000, in the Municipal Court of Dalton, Georgia, Case No. 180898, the applicant entered a plea of guilty to driving under the influence of alcohol (above .10). She was found guilty of the charge, ordered to spend 2 days in jail, fined \$730, placed on probation for a period of 24 months, and ordered to serve 40 hours of community service.
2. On November 6, 2000, in the Municipal Court of Dalton, Georgia, Case No. 180899, the applicant entered a plea of guilty to child endangerment while driving under the influence. She was found guilty of the charge, placed on probation for a period of 24 months, and fined \$705.
3. The record reflects that the applicant was indicted in the Superior Court of Murray County, Georgia (Indictment No. 00-CR-352), for forgery in the 1st degree, a felony. On December 4, 2002, the court entered a "nolle prosequi" on the case. The director, in his decision, determined that the applicant was convicted of a felony offense. This finding of the director will, therefore, be withdrawn.

The applicant was convicted of two misdemeanor offenses. She is, therefore, ineligible for TPS. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

Counsel asserts that the misdemeanor convictions (paragraphs 1 and 2 above) stemmed from one set of facts and circumstances; therefore, the applicant was convicted of only one misdemeanor. Counsel's assertion, however, cannot be accepted. That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. According to the court dispositions, the applicant was charged with two separate offenses under two separate case numbers, she clearly pled guilty to two separate crimes, and the court issued two separate sentences. Therefore, the applicant had been convicted of two separate and distinct misdemeanor offenses.



The burden of proof is upon the applicant to establish that she 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.