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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 04 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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. The director, therefore, denied the application.

On appeal, the applicant submits additional documents.

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 --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(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).

The record reflects the following:

1. On March 1, 2001, in the Superior Court of Los Angeles County, California, the applicant was indicted for possession of marijuana/hashish for sale, 11359 H&S, a felony (Docket No. [REDACTED]). On July 10, 2001, the applicant entered a plea of guilty and the court found him guilty of the charge. He was placed on probation for a period of 36 months, under the terms and conditions that he serve one day in jail, perform 100 hours of community service, and pay restitution in the amount of \$200 plus \$170 in fines and costs.
2. The Federal Bureau of Investigation (FBI) report shows that the applicant was arrested on February 9, 1999, in Los Angeles, California, and charged with grand theft auto. The final disposition of this arrest is

not contained in the record although the applicant was requested on March 24, 2003, to submit final court dispositions of all arrests.

3. The court record of the applicant's charges outlined in No. 1 above, references an alleged prior conviction for 496 PC, receiving stolen property, on April 22, 1999, in Los Angeles County Superior Judicial District under case number [REDACTED]. The applicant failed to submit the court disposition of this alleged prior conviction although the applicant was requested on March 24, 2003, to submit final court dispositions of all arrests. It is not clear if this case is related to No. 2 above. Furthermore, grand theft auto and receiving stolen property are crimes involving moral turpitude, and convictions of these crimes may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his felony conviction. He is also inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his conviction relating to a controlled substance. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Furthermore, there is no waiver available to an alien found inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act.

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.