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



MI

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.

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 failed to comply to his request to provide the court dispositions of his arrests. The director, therefore, denied the application.

On appeal, the applicant asserts that there is no record of his arrest of May 27, 1999. He submits additional court documents of other 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 applicant submits court documents for the following arrests and/or convictions:

1. On October 28, 1993, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, [REDACTED] the applicant was convicted of vandalism, in violation of 594(a) PC, a misdemeanor. He was placed on probation for a period of 24 months, and ordered to perform 30 days of community service.
2. On May 12, 1995, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, [REDACTED] the applicant was indicted for Count 1, under the influence of alcohol/drug in vehicle, in violation of 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent alcohol or more, in violation of 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, in violation of 12500(a) VC, a misdemeanor. On May 31, 1995, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, under the terms and conditions that he serve 48 hours in the county jail, and pay a total of \$1331 in fines, costs, and restitution. Counts 1 and 3 were dismissed.
3. On July 8, 1996, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, [REDACTED] the applicant was indicted for Count 1, battery, in violation of 242 PC, a misdemeanor; and Count 2, vandalism, in violation of 594(a) PC, a misdemeanor. The court dismissed Count 2 on August 8, 1996. On August 12, 1996, a jury found the applicant not guilty as to Count 1.
4. On May 29, 1998, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, [REDACTED] the applicant, in a 5-count indictment, was convicted of

Count 2, driving with .08 percent blood alcohol level or more, in violation of 23152(b) VC, a misdemeanor; and Count 5, driving while license suspended, in violation of 14601.2(a), a misdemeanor. As to Count 2, the applicant was placed on probation for a period of 60 months, ordered to spend 60 days in the county jail, and fined \$390. As to Count 5, the applicant was placed on probation for a period of 36 months, and fined \$300. Counts 1, 3, and 4 were dismissed.

5. On August 25, 1998, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, [REDACTED] the applicant was convicted of battery, in violation of 242-243(b) PC, a misdemeanor. He was placed on probation for a period of 24 months, ordered to spend 30 days in the county jail, and ordered to pay \$176 in fines and costs.

6. The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, shows that on May 27, 1999, the applicant (name used: [REDACTED] was arrested by the Los Angeles Police Department for battery of a police officer/emergency personnel/etc. Based on the FBI report, the director requested that the applicant furnish the court disposition of this arrest. On appeal, the applicant states that there is no record of this arrest. He submits a letter dated August 1, 2003, from the Executive Officer/Clerk of the Superior Court of California, County of Los Angeles, indicating that there is no record in that office making reference to [REDACTED] from May 27, 1999. It is not clear in the record, however, if the case was heard in that court, or in another court. Furthermore, it is noted that the court's reference check was made on [REDACTED] rather than "Alejandro Roberto Espana."

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