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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**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **NOV 04 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: 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 four or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant requests approval of his application because he is enrolled in self-behavior and improvement classes.

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 October 15, 1987, in the Superior Court of California, County of Alameda, Docket [REDACTED] (arrest date May 9, 1987), the applicant was convicted of battery, in violation of [REDACTED]. He was placed on probation for a period of 12 months.
2. On March 5, 2001, in the Superior Court of California, [REDACTED] (arrest date March 31, 2000), the applicant was convicted of driving under the influence, in violation of [REDACTED] misdemeanor. He was placed on probation for a period of 5 years, ordered to spend 45 days in jail, ordered to pay \$1190 in fines and court costs, and his license was suspended for 2 years.
3. On March 21, 2002, in the Superior Court of California, County of Alameda, [REDACTED] (arrest date May 2, 2000), the applicant was convicted of driving under the influence, 2 priors, in violation of [REDACTED] a misdemeanor. He was placed on probation for a period of 36 months, and ordered to serve time in jail and pay an undetermined amount in fine and court fee.
4. On April 24, 2002, in the Superior Court of California, County of [REDACTED] (September 30, 2001), the applicant was convicted of driving under the influence, in violation of 23152(a) VC, a misdemeanor. He was placed on probation for a period of 5 years, ordered to spend 270 days in jail, ordered to pay \$1300 in fines and \$100 restitution fee, and his license was suspended for 3 years.

5. The Federal Bureau of Investigation (FBI) report shows that on January 23, 2002, in Oakland, California, the applicant was arrested for driving under the influence of alcohol/drugs. The court disposition of this arrest is not contained in the record.

6. The FBI report further shows that on April 12, 2002, in Martinez, California, the applicant was arrested for Count 1, probation violation, rearrest/revoke; Count 2, driving under the influence (DUI) of alcohol/drug with priors; Count 3, failure to appear; Count 4, DUI alcohol/drugs with priors; Count 5, driving with suspended license, DUI violation; Count 6, DUI alcohol/0.08 with priors; Count 7, DUI alcohol/0.08 with priors; and Count 8, driving with suspended license. The court disposition of this arrest is not contained in the record.

7. In a supplement to his application for TPS, the applicant admitted that he was convicted of driving with a blood alcohol level of .08% or greater in 1996 in Hayward, California; however, the actual court disposition for this offense is not contained in the record of proceedings.

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