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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 08 2005  
[EAC 02 158 51405]

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, Vermont 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 denied the application because the applicant was convicted of two felony offenses committed in the United States, and because he found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant asks forgiveness for all misconducts he committed in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more

misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy 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 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On June 1, 2001, in the Superior Court of the District of Columbia, (Case No. [REDACTED]) the applicant was convicted of distribution of a controlled substance (cocaine), a felony. While the applicant furnished an illegible court document on this case, the record shows that the applicant was placed on probation.
- (2) On June 1, 2001, in the Superior Court of the District of Columbia, the applicant was convicted of distribution of cocaine in drug-free zone, a felony. The applicant was sentenced to serve 14 months in jail, 3 years of supervised release, and "ESS" 18 months. It is not clear from the record if this conviction is related to No. 1 above.
- (3) June 1, 2001, in the Superior Court of the District of Columbia, the applicant was convicted of escape, a felony. He was sentenced to "6 (six) months; 1 (one) year supervised release credit time served."
- (4) On June 15, 1998, in the Superior Court of the District of Columbia, the applicant was indicted for carrying a dangerous weapon-machete, a felony. The case was dismissed on July 14, 1998.
- (5) On July 27, 1998, in the Superior Court of the District of Columbia, the applicant was indicted for assault with a dangerous weapon, a felony. It is not clear in the record as to the final disposition of this offense.

- (6) On March 7, 2000, in the Superior Court of the District of Columbia, the applicant was indicted for Count 1, possession with intent to deliver cocaine; Count 2, possession of cocaine; and Count 3, possession of marijuana. The case was dismissed on June 1, 2001.
- (7) On April 4, 2000, in the Superior Court of the District of Columbia, the applicant was indicted for Count 1, unauthorized use of a vehicle; Count 2, possession with intent to deliver cocaine; and Count 3, theft. The case was dismissed on June 1, 2001.
- (8) April 7, 2000, in the Superior Court of the District of Columbia, the applicant was indicted for Count 1, possession with intent to deliver a controlled dangerous substance-cocaine, a felony; and Count 2, possession of a controlled dangerous substance, a misdemeanor. The case was dismissed on June 1, 2001.

The applicant is ineligible for TPS due to his record of at least two felony convictions, detailed above, and because he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his drug-related convictions. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. There is no waiver available for inadmissibility under section 212(a)(2)(a)(i)(II) of the Act. Consequently, the director's decision to deny the application for these reasons will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or 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.

**ORDER:** The appeal is dismissed.