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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: JAN 18 2005

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 was ineligible for TPS because he had been convicted of at least two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he was previously under immigration proceedings and the judge was aware of his arrests. He requests that his case be taken into consideration and that he be given another chance. He submits additional evidence.

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...

The record reflects the following:

1. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 19, 1995, the applicant was arrested in Torrance, California, and charged with Count 1, theft of personal property, and Count 2, receive/etc. known stolen property. The final court disposition of this arrest is not included in the record. The applicant, on appeal, submits a letter from the Superior Court, Southwest District, Torrance, California, indicating that no record was found for the arrest dated December 19, 1995, regarding [REDACTED]. However, it is noted on the FBI report that the applicant, upon his arrest, used the name [REDACTED].
2. On February 6, 1996, in the Municipal Court of Inglewood Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was convicted of inflicting corporal injury on spouse, in violation of 273.5(a) PC, a misdemeanor. He was sentenced to serve 45 days in jail.

3. On May 8, 2003, in the Municipal Court of the City of Reno, County of Washoe, Nevada, Case No. [REDACTED] the applicant was convicted of domestic battery, in violation of Reno Municipal Code 8.08.020B. He was sentenced to 90 days in prison, suspended, on the conditions that he spend 2 days in the county jail, pay a total of \$315 in fines and costs, complete 26-28 weeks of domestic violence counseling, and perform 48 hours of community service.

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 two 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 applicant is also ineligible due to his failure to submit the requested court dispositions for the offenses in No. 1 above.

The applicant may also be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act; however, this determination cannot be made at this time since the applicant has failed to submit the court dispositions for the charges detailed in No. 1 above. There is no waiver available to an alien found inadmissible under this section. *See* 8 C.F.R. § 244.3(c)(1).

The record shows that removal proceedings relating to the applicant were before the Board of Immigration Appeals (BIA). On June 26, 2001, the BIA noted that the applicant may be eligible to apply for TPS and administratively closed the case on June 26, 2001.

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.