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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: California Service Center Date: **JAN 27 2005**  
[WAC 02 214 51850]

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:



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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States in 1986 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because he found that the applicant had been convicted of a felony offense.

On appeal, counsel asserts that the applicant was convicted of a misdemeanor offense, not a felony, and that the conviction has been vacated.

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act.

"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. 8 C.F.R. § 244.1.

"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. 8 C.F.R. § 244.1.

The record reveals that on May 19, 1988, the applicant was charged in the Superior Court of California, County of Los Angeles, with hit and run resulting in bodily injury or death in violation of section 20001 VC, a felony. (Offense Date: March 28, 1988). On June 24, 1988, the applicant was placed on probation for a period of three years. As a condition of probation, the applicant was ordered to be incarcerated in the county jail for a period of 365 days.

The director determined that the applicant was ineligible for TPS based on his felony conviction and denied the application on September 24, 2003.

On appeal, counsel asserts that the applicant's conviction "was a misdemeanor not a felony and was ordered vacated." Counsel submits a photocopy of an expungement order. However, this court order does not refer to the applicant's felony hit and run conviction. Rather, the court document reveals that the applicant was convicted of driving under the influence in violation of section 23152(a) VC, and of unlicensed driving in violation of section 12500(a) VC; both charges are misdemeanors. The photocopy is of such poor quality that it is not clear whether these convictions occurred on March 6, 1985, or March 6, 1995, and the case number is illegible.

It appears that the applicant's two misdemeanor convictions have been expunged pursuant to section 1203.4 PC. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant remains convicted of these misdemeanors for immigration purposes.

The applicant is ineligible for temporary protected status due to his record of one felony and two misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application based upon the applicant's criminal record will be affirmed.

Beyond the decision of the director, the record reveals that the applicant indicated on Part 4, Line 2, of his application for TPS, that he had not been convicted of a felony or two or more misdemeanors. As detailed above, at the time he completed his application for TPS the applicant had been convicted of one felony and two misdemeanors. This misrepresentation of material facts in an application for immigration benefits also renders the applicant inadmissible under section 212(a)(6)(C) of the Act. While this ground of inadmissibility may be waived, the applicant would remain ineligible under 8 C.F.R. § 244.4(a), as discussed above.

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.