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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2005  
[WAC 01 225 51481]

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 a felony or two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he is seeking an attorney to represent him before the Courts “to seek to remedy my Immigratory legal conditions.” While the applicant indicates that he needs an additional 30 days in which to submit a brief and/or evidence, to date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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 May 25, 1993, in the Municipal Court of San Fernando Courthouse Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 24, 1993), the applicant was indicted for Count 1, battery, 242 PC, a misdemeanor; and Count 2, inflicting corporal injury on spouse, 273.5(a) PC, a misdemeanor. On May 25, 1993, the applicant was convicted of Count 1. He was placed on probation for a period of 24 months, and ordered to spend 10 days in jail. Count 2 was dismissed.
2. The Federal Bureau of Investigation report shows that on August 12, 1995, in San Fernando, California, the applicant was arrested for battery. The final disposition of this arrest is not contained in the record.
3. On December 29, 1995, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 9, 1995), the applicant was indicted for Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On January 4, 1996, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, and ordered to pay a total of \$1,120 in fines and costs. Count 1 was dismissed.
4. On May 19, 1998, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 1, 1998), the applicant was indicted for disorderly conduct: prostitution, 647(b) PC, a misdemeanor. On May 29, 1998, the applicant was

convicted of the crime. He was placed on probation for a period of 24 months, and in lieu of jail: perform 10 days of "Cal Trans" and pay restitution fine in the amount of \$100.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his three misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Therefore, the director's decision to deny the application for this reason will be affirmed.

It is noted in the record that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on April 8, 1993, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about February 22, 1989.

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.