

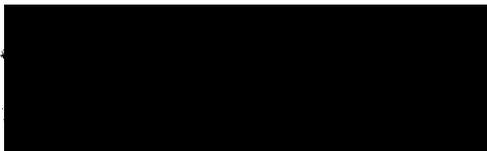
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U.S. Department of Homeland Security
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**U.S. Citizenship
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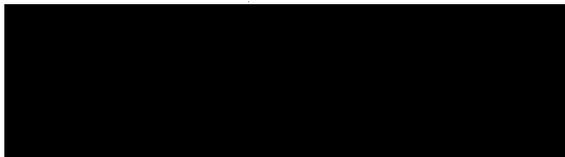
FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 07 2005**

[WAC 01 258 62305]

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, 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 denied the application because the applicant was convicted of two misdemeanors committed in the United States.

On appeal, counsel submits a brief and additional evidence.

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.

The record reveals the following offenses:

- (1) On February 6, 1993, in Los Angeles, California, Case No. [REDACTED] the applicant was arrested and charged with Count 1, exhibiting a deadly weapon other than firearm, 417(a)(1) PC, a misdemeanor; Count 2, assault with a deadly weapon/instrument, 245(a)(1) PC, a misdemeanor; and Count 3, battery, 242 PC, a misdemeanor. The case was dismissed on April 15, 1993.
- (2) On June 17, 1996, in the Municipal Court of Los Angeles, Glendale Courthouse Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 9, 1996), the applicant was indicted for Count 1, driving with suspended license, 14601.1(a) VC, a misdemeanor; and Count 2, registration required, 4000(a) VC, an infraction. On November 13, 1996, the court ordered the complaint amended and added Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. The applicant was convicted of Count 3, and he was placed on probation for a period of one year, and ordered to pay a total of \$810 in fines and costs. Counts 1 and 2 were dismissed.
- (3) On April 23, 1998, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor, with alleged prior conviction on Count 2. On April 23, 1998, the applicant was convicted of Count 2. He was placed on probation for a period of 60 months with the condition that he spend 48 hours in the county jail, pay a total of \$1,331 in fines and costs, participate in an 18-month program of treatment or counseling, and driving restricted for 18 months. Count 1 was dismissed.
- (4) The court record regarding the applicant's conviction of Count 2, detailed in No. 3 above, states "alleged prior conviction on count 2 for 23152(b) VC - .08% more wght alchl drive veh on 6/23/97 in L.A. Mun-San Fernan Judicial District under case number [REDACTED] The

applicant failed to submit the final court disposition of this arrest and conviction, although he was requested on November 24, 2003, to submit final court dispositions of any and all arrests.

On appeal, counsel asserts that the applicant was convicted of only one misdemeanor because the other charge for unlicensed driver (No. 2 above) is an infraction. She submits an order of the Superior Court of California, County of Los Angeles, dated July 1, 2004, approximately eight years after the applicant's misdemeanor conviction, granting the applicant's motion to declare this offense an infraction.

The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Furthermore, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. Therefore, the applicant remains convicted, for immigration purposes, of the misdemeanor offense detailed in No. 2 above.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, and because he failed to provide the final court disposition of his arrest detailed in No. 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted in the record that the applicant was removed from the United States to El Salvador on June 23, 1999, based on an order of the Immigration Judge on June 7, 1999 (File No. [REDACTED]).

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.