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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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[REDACTED]

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAR 07 2005**  
[EAC 02 268 50780]

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:  
[REDACTED]

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 had been convicted of two misdemeanors committed in the United States.

On appeal, counsel submits a statement 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

misdeemeanors 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 December 14, 1987, in the Harris County District Court, Texas, Court Case No. [REDACTED] the applicant was indicted for possession of a controlled substance, a felony. On August 11, 1988, the applicant was convicted of the charge. He was sentenced to the Texas Department of Criminal Justice Institutional Division for 7 years, and ordered to pay \$1000 in fines. On August 29, 1994, approximately 6 years later, the court terminated the applicant's probation, and set aside and dismissed the case.
- (2) On December 14, 1987, in the Harris County District Court, Texas, Court Case No. [REDACTED] the applicant was indicted for possession of a weapon, a misdemeanor. On August 12, 1988, the applicant was convicted of the charge. He was sentenced to 3 days in the Harris County Jail.
- (3) On December 14, 1987, in the Harris County District Court, Texas, Court Case No. [REDACTED] the applicant was indicted for resisting arrest-search, a misdemeanor. On August 12, 1988, the applicant was convicted of the charge. He was sentenced to 3 days in the Harris County Jail.
- (4) On November 18, 1984, in the Harris County District Court, Texas, Court Case No. [REDACTED] the applicant was indicted for assault-bodily injury, a misdemeanor. On November 21, 1984, the applicant was convicted of the charge. He was sentenced to 3 days in the Harris County Jail. In a statement furnished on appeal, the applicant asserts that he was not convicted of this offense. He states that the "officer simply could not read the certificate

of disposition and applied somebody else's conviction to me." It is noted, however, that the Certificate of Disposition furnished by the applicant shows: "Defendant Name: [REDACTED] [REDACTED] No evidence was furnished to corroborate his assertion that the conviction belongs to someone else. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel states that the last page of the disposition shows that the applicant's case was deferred by the court without entering a finding of guilt and placed him in community supervision; therefore, despite the charges, the applicant was apparently never found guilty.

The order of the court dated April 10, 2002, referenced by counsel, states that "the court authorized the state to prosecute the case as a misdemeanor under Texas Penal Code Section 12.44(b). The court deferred further proceedings without entering a finding of guilt and placed the defendant on community supervision. Deferred adjudication of guilt terminated, defendant discharged, case dismissed..."

The court order, however, did not identify the relating conviction or case. Assuming that this order relates to No. 1 above, section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Notwithstanding the fact that the court deferred further proceedings without entering a finding of guilt, the record reflects that the applicant entered a plea of guilty and the judge ordered some form of punishment (jail, probation, and fine). The applicant, therefore, was convicted within the meaning of section 101(a)(48)(A) of the Act.

Furthermore, despite the subsequent dismissal of the applicant's conviction (No. 1 above), 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, 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. Therefore, the applicant remains convicted, for immigration purposes, of No. 1 above.

The applicant is ineligible for TPS due to his convictions of a felony and three misdemeanors, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Additionally, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction detailed in No. 1 above. Consequently, the director's decision to deny the application will be affirmed. There is no waiver available for inadmissibility under this section of the Act.

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.