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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]
[WAC 01 243 54811]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 17 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. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 he found the applicant had been convicted of two or more misdemeanor offenses.

On appeal, the applicant 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 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 in California:

- (1) On November 16, 1993, the applicant was convicted in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, of hit and run/property damage in violation of section 20002(a) VC, a misdemeanor. (Arrest Date: February 13, 1993; Docket # [REDACTED])
- (2) On February 9, 1993, the applicant was convicted in the Municipal Court of Alhambra Judicial District, County of Los Angeles, of theft of property in violation of section 484(a) PC, a misdemeanor. (Arrest Date: January 9, 1993; Docket # [REDACTED])

On appeal, the applicant states that he was a young man when he was convicted of the two misdemeanors listed above, and did not realize the consequences of his behavior. He states that he complied with all the fines and court orders arising from his two convictions and has had a clean record since that time. He submits court documents indicating that he has fulfilled the conditions of probation for both of his convictions.

However, Congress has not provided any exception for aliens who have been fulfilled the conditions of probation. The fulfillment of the conditions of probation relating to a misdemeanor charge does not vacate a

conviction and is of no effect in determining whether an alien is considered convicted for immigration purposes.

It is noted that the applicant indicated on the Form I-821, Application for Temporary Protected Status, that he had not been convicted of a felony or two misdemeanors. Therefore, he may be inadmissible under section 212(a)(6)(C) of the Act as an alien who attempted to attain an immigration benefit through fraud or the willful misrepresentation of a material fact.

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.