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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



M7

FILE: [REDACTED]
[WAC 01 236 58337]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 25 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:



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

On appeal, counsel submits a statement.

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 August 31, 1998, in the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] (arrest date March 19, 1997), the applicant, was indicted for Count 1, failure to obey sign posted, 21655.5(b) VC, an infraction; Count 2, driving without a valid driver's license, 12500(a) VC, a misdemeanor; Count 3, failure to appear, 40508(a) VC, a misdemeanor; Count 4, no proof of car insurance, 16028(a), an infraction; and Count 5, failure to appear, 40508(a) VC, a misdemeanor. On August 31, 1998, the applicant was convicted of Counts 1, 2, and 3. Sentence was suspended as to Counts 1 and 2, and he was sentenced to time served as to Count 3. Counts 4, and 5 were dismissed.
- (2) On August 31, 1998, in the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] (arrest date August 24, 1997), the applicant was indicted for Count 1, driving under the influence, 23152(a) VC, a misdemeanor; Count 2, driving while license suspended or revoked, 14601.1(a) VC, a misdemeanor; Count 3, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a), an infraction. On August 31, 1998, the applicant was convicted of Counts 2 and 3. He was ordered to pay \$500 in fines and costs as to Count 2, and sentenced to serve 20 days in jail as to Counts 2 and 3, concurrently. Counts 1 and 4 were dismissed.
- (3) The Federal Bureau of Investigation fingerprint results report shows that on August 29, 1998, in San Jose, California, the applicant was arrested for Count 1, driving under the influence; Count 2, driving with .08 percent blood alcohol level or more; Count 3, driving while privilege was suspended or revoked-for other reasons; Count 4, unlicensed driver, Count 5, failure to appear; Count 6, failure to provide evidence of financial responsibility to a peace officer; and Count 7, failure to appear. The final court disposition of this arrest is not contained in the record.
- (4) On June 2, 1999, in the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] (arrest date April 21, 1999), the applicant was convicted of Count 1, a violation of 24600(b) VC, tail lamps/rear lighting equipment, an infraction; and Count 2,

driving while license suspended or revoked, 14601.1(a) VC, a misdemeanor. He was placed on probation for a period of 3 years and ordered to serve 5 days in jail as to Count 2. Sentence was suspended as to Count 1.

- (5) On June 7, 1999, in the Municipal Court of California, Santa Clara County Judicial District, Case No. [REDACTED] (arrest date December 8, 1998), the applicant was convicted of driving while license suspended or revoked, 14601.1 VC, a misdemeanor. He was sentenced to serve 5 days in jail, and ordered to pay \$100 in fines and costs.

On appeal, counsel asserts that the applicant was convicted of only two misdemeanors under case number [REDACTED] No. 2 above). He states that he needs an additional 60 days in which to present evidence and rebut the remaining charges. To date, however, no additional evidence has been provided.

The applicant is ineligible for TPS due to his record of at least six misdemeanor convictions, detailed 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.

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.