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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] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 28 2005**
[WAC 01 184 57186]

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 that the applicant had been convicted of two or more misdemeanor offenses.

On appeal, the applicant submits copies of various court documents previously submitted in response to the Notice of Intent to Deny.

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 April 27, 2001, the applicant was arrested in San Diego, California, and charged with one count of driving under the influence of alcohol or drugs in violation of section 23152(a) VC, a misdemeanor; one count of driving with a blood alcohol content of 0.08% or higher in violation of section 23152(b) VC, a misdemeanor; and, one count of driving without a license in violation of section 12500(a) VC, a misdemeanor. On May 31, 2001, count one, 23152(a) VC, was amended in the Superior Court of California, County of San Diego, to one count of driving with alcohol in his system and in an unsafe manner in violation of section 23103(a) VC, a misdemeanor. The applicant pled guilty to this charge. Counts 2 and 3 were dismissed. (Case Number [REDACTED])
- (2) On July 25, 2001, the applicant was charged in the Superior Court of California, County of Orange, with one count of driving under the influence of alcohol or drugs in violation of section 23152(a) VC, a misdemeanor; one count of driving with driving under the influence of alcohol with a blood alcohol content of 0.08% or higher in violation of section 23152(b) VC, a misdemeanor; and, one count of driving while his license was suspended or revoked in violation of section

- 14601.5(a) VC, a misdemeanor. On April 15, 2002, the applicant pled guilty to counts one and three above. Count two, a misdemeanor charge of 23152(b) VC, was dismissed. (Date of Arrest: June 3, 2001; Docket Number: [REDACTED] A).
- (3) On April 14, 2002, the applicant was arrested in Huntington Beach, California, and charged with public intoxication in violation of section 647(f) PC, a misdemeanor. There is no indication in the record that the applicant was formally charged with this offense. (Booking #: [REDACTED])
 - (4) On May 14, 2002, the applicant was charged in the Superior Court of California, County of Orange, with one count of driving while his license was suspended or revoked in violation of section 14601.1(a) VC, a misdemeanor; one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; and one count of failure to provide evidence of financial responsibility at the scene of an accident in violation of section 16025(a) VC, a misdemeanor. On May 16, 2002, the court added a fourth charge, failure to appear in court pursuant to a warrant in violation of section 853.7 PC, a misdemeanor. On October 11, 2002, the applicant pled guilty to count one, driving while his license was suspended or revoked. Counts 2, 3, and 4 were dismissed. (Date of Arrest: April 14, 2002; Docket #: [REDACTED])
 - (5) On April 21, 2003, the applicant pled guilty in the Superior Court of California, County of Orange, to driving while his license was suspended or revoked in violation of section 14601.5(a) VC, a misdemeanor. (Docket #: [REDACTED])

On appeal, the applicant does not submit a brief or statement regarding the ground for the denial of his application. He submits photocopies of court documents confirming the convictions detailed above.

The applicant is ineligible for TPS due to his record of five misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of two misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) 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.