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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 01 198 50226]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 05 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 misdemeanors.

On appeal, the applicant submits a brief.

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 parole; 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On November 10, 1999, the applicant was arrested in Los Angeles, California, and charged with one count of taking a vehicle without the consent of the owner in violation of section 10841(a) VC, a misdemeanor; one count of driving with a suspended driver's license in violation of section 14601.1(a) VC, a misdemeanor; and, one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. On December 28, 1999, the applicant was convicted in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, State of California, of count (2), driving with a suspended license. Counts (1) and (3) were dismissed in the furtherance of justice. (Docket Number [REDACTED])
- (2) On September 24, 2000, the applicant was arrested in Glendale, California, and charged with one count of burglary in violation of section 459 PC, a misdemeanor. On October 24, 2000, the applicant was convicted in the Municipal Court of Los Angeles, Glendale Courthouse Judicial District, County of Los Angeles, State of California, of the amended charge of grand

theft of property valued at over \$400 in violation of section 487(a) PC, a misdemeanor. Count (1), burglary in violation of section 459 PC, was dismissed due to plea negotiation. (Docket Number [REDACTED])

- (3) On June 25, 2001, the applicant was arrested in Los Angeles, California, and charged with one count of vandalism causing property damage of \$50,000 or more. The applicant has not provided the final court disposition of this arrest.
- (4) On May 13, 2003, the applicant was arrested in Los Angeles, California, and charged with one count of petty theft with a prior jail term in violation of section 666 PC, a misdemeanor. On November 23, 2003, the applicant was convicted of this charge in the Municipal Court of Airport Branch, County of Los Angeles, State of California. (Docket Number [REDACTED])

On appeal, the applicant asserts that the offenses of which she was convicted were "minor" and requests that she be granted TPS.

The applicant is ineligible for TPS due to her record of three misdemeanor convictions, detailed in Nos. (1), (2), and (4) above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Therefore, the applicant must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

It is noted that the applicant has previously filed Form I-687, Application for Status as a Temporary Resident. Her application was denied on June 17, 1994. It is further noted that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative.

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.