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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: [REDACTED]
[WAC 01 183 56907]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 two or more 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.

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 August 25, 1999, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, Case No. [REDACTED] (arrest date August 17, 1999), the applicant was convicted of false identification card or driver's license, 525.5(a) PC, a misdemeanor. He was placed on probation for a period of 3 years, and ordered to serve 30 days in jail in addition to 4 days in lieu of \$110 in fines.
- (2) On March 14, 2003, in the Superior Court of California, County of San Joaquin, Case No. [REDACTED] the applicant, in a multiple-count indictment, was convicted of Count 4, hit and run driving causing property damage, 20002 VC, a misdemeanor; Count 6, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 7, failure to appear, 40508(a) VC, a misdemeanor. He was placed on probation for a period of 5 years, ordered to enroll and complete an alcohol program, and his driving privilege was restricted for 3 months as to Counts 4, 6, and 7. He was sentenced to serve 10 days and ordered to make restitution in the amount recommended by the probation office as to Count 4. He was sentenced to serve 15 days in jail, and ordered to pay \$2277 in fines, costs and restitution as to Count 6. He was sentenced to serve 10 days in jail as to Count 7.
- (3) The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on October 28, 2000, in Lodi, California, for Count 1, driving under the influence of alcohol; Count 2, hit and run with property damage; and Count 3, driving without a license. The final court disposition of this arrest is not contained in the record, nor is there evidence in the record to suggest that this arrest relates to No. 2 above.

On appeal, counsel asserts that although the applicant stands convicted of PC 529.5 (No. 1 above), the applicant received a total of 34 days in the county jail; therefore, as a result, this offense qualifies for treatment under section 212(a)(2)(A)(ii) of the Act as a petty offense.

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.** (Emphasis added.)

Counsel is correct in his assertion that the conviction of No.1 above falls under the "petty offense" exception in section 212(a)(2)(A)(ii) of the Act. However, this exception does not apply to the determination of the applicant's eligibility for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant was found guilty and the judge ordered some form of punishment (34 days in jail, and three years of probation). The applicant, therefore, has been convicted of a misdemeanor in No. 1 above within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions detailed in Nos. 1 and 2 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.

The FBI report shows that the applicant was apprehended by the Border Patrol in Stockton, California, on August 27, 1999, and charged with illegal entry into the United States pursuant to 8 U.S.C. § 1325, and that the applicant voluntarily returned to Mexico.

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.