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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: [REDACTED]
[WAC 01 295 56615]

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.

A handwritten signature in black ink, appearing to read "R. 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 misdemeanors committed in the United States.

On appeal, the applicant asserts that he had been convicted of only one misdemeanor. He states that he had problems when he was younger, but he had no intention of hurting anyone. He submits additional evidence of his residence and physical presence in the United States.

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 December 29, 1995, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 28, 1995), the applicant was indicted for Count 1, permitting another to carry firearm into a vehicle, 12034(a) VC, a misdemeanor; Count 2, carrying a concealed weapon within a vehicle, 12025(a)(1) PC, a misdemeanor; and Count 3, carrying a loaded firearm in a public place, 12031(a) PC, a misdemeanor. On December 29, 1995, the applicant was convicted of Count 1. He was placed on probation for a period of 24 months, ordered to spend 2 days in the county jail, and pay restitution in the amount of \$100. Counts 2 and 3 were dismissed.
- (2) On August 1, 1995, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 29, 1995), the applicant was indicted for Count 1, disturbing the peace, 415 PC, a misdemeanor; Count 2, possession of a deadly weapon with intent to assault, 12024 PC, a misdemeanor; and Count 3, assault with a deadly weapon/instrument, 245(a)(1) PC, a misdemeanor. On August 31, 1995, proceedings were terminated based on "delay-action not brought to court in time."
- (3) On January 25, 1996, in the Municipal Court of San Fernando Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date January 24, 1996), the applicant was indicted for Count 1, trespassing: refuse to leave property, 602(n) PC, a misdemeanor; and Count 2, unlawful entry of closed property, 41.24(a) LAM, a misdemeanor. On February 21, 1996, the applicant was convicted of Count 1. He was placed on probation for a period of 12 months, and ordered to spend one day in the county jail. Count 2 was dismissed.

On appeal, the applicant asserts that he had been convicted of only one misdemeanor. He states that he had problems when he was younger, but he had no intention of hurting anyone.

Despite the applicant's assertion, the record shows that the applicant was convicted of two misdemeanor offenses, detailed in Nos. 1 and 3 above; therefore, he is ineligible for TPS based on these convictions. 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 record contains a Warrant of Deportation, Form I-205, issued in Los Angeles, California, on August 19, 1996, based on the final order of removal by an immigration judge on January 24, 1996. The applicant failed to appear at the Los Angeles district office on September 18, 1999, for his enforced departure.

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.