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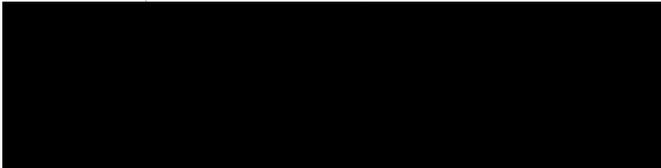
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 25 2005**
[EAC 01 203 56128]

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, Vermont Service Center, and 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 the applicant had been convicted of a felony committed in the United States.

On appeal, counsel submits a statement and additional evidence. While counsel indicates that a brief and/or evidence will be furnished within 30 days, to date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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 TPS 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 May 27, 2000, the applicant was arrested and charged with Count 1, operating a motor vehicle while intoxicated (.13 percent blood alcohol level), VTL 1192.2 & 3, a misdemeanor; Count 2, failure to drive on right side of roadway, VTL 1120(a); and Count 3, operating a motor vehicle without a license, VTL 509.1. On September 6, 2000, in the Local Criminal Court, Town of Riverhead, New York, Docket No. [REDACTED] Count 1 was subsequently reduced to driving while ability impaired, VTL 1192.1, a misdemeanor, and the applicant was convicted of this reduced charge. He was ordered to pay \$335 in fines and costs. The final disposition as to Counts 2 and 3 shows "C1" on September 6, 2000. The applicant failed to identify this disposition although the director, on June 6, 2002, advised the applicant that the "charge and disposition must be specifically identified (not just numeric citations or codes)."
- (2) On August 18, 2001, the applicant was arrested and charged with Count 1, driving while intoxicated (.10 percent blood alcohol level), VTL 1192.2; Count 2, "DWI Observation," VTL 1192.3, a misdemeanor; Count 3, aggravated unlicensed operation of a motor vehicle in the first degree, VTL 511.3(a), a class E felony; and Count 4, failure to stay in lane, VTL 1128(a), an infraction. On November 13, 2001, in the Local Criminal Court, Town of Riverhead, New York, Docket No. [REDACTED] the applicant was convicted of Count 1. He was placed on probation for a period of 3 years, and ordered to pay \$625 in fines and costs. The final disposition as to Counts 2, 3, and 4 shows "C1" on January 22, 2002. The applicant failed to identify this disposition although the director, on June 6, 2002, advised the applicant that the "charge and disposition must be specifically identified (not just numeric citations or codes)."

On appeal, counsel asserts that VTL 1192.2 (No. 2 above) is a misdemeanor; therefore, the applicant was not convicted of a felony as determined by the director. Counsel further asserts that the applicant was not charged with aggravated assault, and that this statement by the director is unsupported and groundless.

A review of the record indicates that counsel is correct in his assertions. However, the applicant was charged with a felony "aggravated unlicensed operation of a motor vehicle" (No. 2 above), but the disposition of this offense and other offenses detailed in Nos. 1 and 2 above were not "specifically identified."

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in Nos. 1 and 2 above, and because of his failure to provide information necessary for the adjudication of his application. Section 244(c)(2)(B)(i) of the Act; 8 C.F.R. § 244.4(a); and 8 C.F.R. § 244.9(a).

Beyond the decision of the director, it is noted that the record of proceeding does not contain the applicant's birth certificate to establish his nationality.

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.