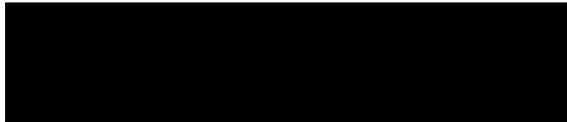


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**U.S. Citizenship
and Immigration
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 16 2005
[WAC 01 164 50410]

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, reopened, and denied again 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 initially denied the application on March 30, 2004, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On May 5, 2004, the applicant failed a motion to reopen and reconsider. On motion, the applicant stated that he didn't understand what documents the director requested in the notice dated January 12, 2004.¹

On May 19, 2004, the director reopened the matter. The director subsequently denied the application again on July 6, 2004, because he found the applicant had been convicted of two misdemeanors.

On appeal, the applicant submits a statement and additional evidence.

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:

¹ It is noted that the director incorrectly entitled the notice as a "Notice of Intent to Withdraw" approval of the applicant's TPS status. The applicant has not been granted TPS. The notice should have been entitled "Notice of Intent to Deny."

(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 January 14, 2000, the applicant was arrested and charged with driving under the influence of alcohol. The record does not contain a final court disposition of this arrest.
2. On June 18, 2001, the applicant was arrested in Inglewood, California, and charged with disorderly conduct under the influence of alcohol or drugs. The record does not contain a final court disposition of this arrest.

3. On December 1, 2001, the applicant was arrested and charged with use of force with a deadly weapon other than a firearm with the likelihood of great bodily injury. On December 19, 2001, the applicant pled guilty to the amended charge of exhibiting a deadly weapon in violation of section 417(a)(1) PC, a misdemeanor, and also to the added charge of battery in violation of section 242 PC, a misdemeanor. (Case Number [REDACTED])
4. On October 14, 2002, the applicant was arrested in Los Angeles, California, and charged with "UNLAWFUL CHEATING TEQ-PROHBT ART6" in violation of section 8-106-12(k) IMC. On November 12, 2002, the applicant pled guilty in the Superior Court of California, County of Los Angeles.

On appeal, the applicant asserts that, as to the charge of exhibiting a deadly weapon in violation of section 417(a)(1) PC detailed in No. 3 above, "this count was not rendered as a conviction. Rather, the court imposed a suspension of sentence." The applicant further asserts that as to count two, battery in violation of section 242 PC, "that count was also suspended. There was no granture of any conviction(s) as to any of the preceding charges by the Marin County Courts."

The applicant appears to refer to the fact that imposition of a part of the sentence with regard to both convictions was suspended. Under section 101(a)(48) of the Act, 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 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 the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Further, 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.**"

The final court disposition documents confirm that the applicant pled guilty, and was convicted of, three misdemeanors, detailed in Nos. 3 and 4 above. The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions. 8 C.F.R. § 244.4(a). There is no waiver available for this ground of ineligibility. Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has not submitted an official Salvadoran photo identification document to establish his identity and nationality.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.