

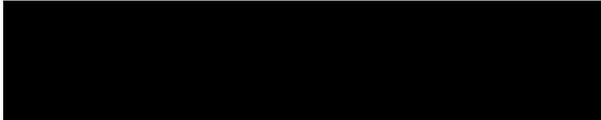
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 18 2005**
[WAC 01 173 58395]

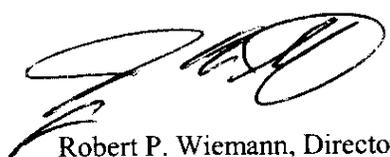
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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 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:
 - (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 that the applicant was arrested on August 19, 2000, in Anaheim, California, and charged with: one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor; one count of driving with a valid driver's license in violation of section 12500(a) VC, a misdemeanor; and, one count of failure to have his driver's license in his possession while driving in violation of section 12951(a) VC. On August 21, 2000, the applicant pled guilty in the Superior Court of California, County of Orange North Justice Center, to counts one and three, driving under the influence of alcohol and driving without a valid driver's license, both misdemeanors. Counts two and four were dismissed. (Case Number [REDACTED])

On appeal, the applicant states that he is petitioning to have his two misdemeanor convictions dismissed "because every one of the above charges are consequences of one sole action."

The applicant's assertion that his two misdemeanor convictions arose in a single occasion and, therefore, he was convicted of a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with four separate counts and he was convicted of two separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term

"count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses.

The applicant submits documents reflecting that he has filed a petition with the Superior Court of California, County of Orange North Judicial District, seeking release from penalties and dismissal of his convictions because he has complied with all the terms of his probation period. The applicant requests 30 days to submit the court dismissal documents and a brief. To date, CIS has not received a brief or any additional evidence from the applicant. Therefore, the record will be considered complete.

Furthermore, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Even if the applicant's convictions were dismissed by the court because he has completed with all the terms of his probation, the fact would remain that the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 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.

It is noted that the applicant's prior removal proceeding was administratively closed by the Immigration Judge in Los Angeles, California, on August 31, 2001, because the applicant had a TPS application pending before Citizenship and Immigration Services.

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.