



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 30 2005

[WAC 01 168 51538]

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 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 he found the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant submits a brief 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).

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 in Los Angeles, California, on November 8, 2002, 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 without a valid driver's license in violation of section 12500(a) VC, a misdemeanor; and, failure to provide proof of car insurance in violation of section 16028(a) VC, an infraction. On November 25, 2002, the applicant was convicted of counts two and three, driving under the influence of alcohol with a blood alcohol content of 0.08% or greater, and driving without a valid driver's license, both misdemeanors. (Case No. [REDACTED] Counts one and four were dismissed in the furtherance of justice per section 1385 PC.

On appeal, counsel for the applicant asserts that both convictions arose out of a single cause and should be considered a single crime, not two. Counsel submits another copy of the final court disposition of the offenses detailed above; a court document indicating that the applicant has paid all fines resulting from the convictions detailed above; and, a copy of the applicant's driving record from the California Department of Motor Vehicles. It is noted that the applicant's California driver's record indicates that the applicant has been subsequently convicted of driving without a valid driver's license in violation of section 12500(a) VC, a

misdemeanor, on September 24, 2003. (Case Number [REDACTED]) This represents a third misdemeanor conviction.

While the determination of whether the applicant's crimes arose "out of a single cause" may be relevant to the issue of his *removability* under section 237 of the Act, this determination has no bearing on his *eligibility* for TPS. The record confirms that the applicant has been convicted of three misdemeanor offenses, as detailed above.

The burden of proof is upon the applicant to establish that he meets the above requirements. The applicant is ineligible for temporary protected status due to his record of three misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Counsel's assertions on appeal do not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Finally, the record reveals that the applicant fraudulently indicated on Part 4, Line 2, of his TPS application that he had not been arrested or convicted of any criminal offenses since his arrival in the United States. This misrepresentation of material facts in an application for immigration benefits renders the applicant inadmissible under section 212(a)(6)(C) of the Act. While this ground of inadmissibility may be waived, the applicant would remain ineligible under 8 C.F.R. § 244.4(a) as discussed above.

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.