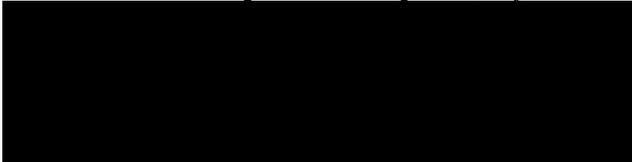


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FILE:



[WAC 01 236 50351]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 03 2005

IN RE:

Applicant:



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.

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 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 either a felony or two or more misdemeanors committed in the United States.

On appeal, the applicant requests that he be granted TPS because his family depends on him for economic and moral support.

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 January 8, 2000, in Ventura, California, the applicant, under the name of [REDACTED] was arrested for forging official seal. The final court disposition of this arrest is not contained in the record. Nor does the record contain evidence to show whether this arrest relates to No. 2 below.
- (2) On January 11, 2000, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date January 8, 2000), the applicant, under the name of [REDACTED] was convicted of public intoxication, PC 647(f), a misdemeanor. He was ordered to serve 6 days in the county jail, and pay \$308 in fines and costs.
- (3) On October 25, 2000, in the Superior Court of California, County of Monterey [REDACTED] Case No. [REDACTED] (arrest date October 22, 2000), the applicant, under the name of [REDACTED] was convicted of disorderly conduct: under the influence of drugs or alcohol, PC 647(f), a misdemeanor. He was placed on probation for a period of one year, ordered to serve 4 days in jail, and pay \$100 in restitution.
- (4) On January 3, 2001, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date January 1, 2001), the applicant, under the name of [REDACTED] was convicted of public intoxication, PC 647(f), a misdemeanor. He was ordered to serve 3 days in the county jail.
- (5) A letter dated April 22, 2004, from the Superior Court of California, County of Ventura, indicated that, "there is also pending a citation from [REDACTED] with an appearance date of 5-10-04." The applicant failed to submit the court documents relating to this citation.

The applicant is ineligible for TPS due to his record of at least 3 misdemeanor convictions, detailed in Nos. 2, 3, and 4 above, and because he failed to provide the final court dispositions of his arrests detailed in Nos. 1

and 5 above. 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 will be affirmed.

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.