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

MI

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **OCT 19 2005**

[SRC 02 036 56848]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because he had been convicted of two or more misdemeanors. The director, therefore, denied the application.

On appeal, counsel asserts that the director erred in the denial of the application because one of the applicant's convictions is not a crime of moral turpitude, and should not be considered a misdemeanor.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General (now, 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The Federal Bureau of Investigation (FBI) fingerprint results report and the records of the Department of Homeland Security (DHS) database, contained in the record of proceeding, reflect the following:

1. On September 2, 1998, in Houston, Texas, the applicant was arrested and charged with Count 1, sexual assault, 22.011(a)(1) PC, a felony; and Count 2, assault-threaten bodily injury, 22.01(a)(2) PC, a Class A misdemeanor. The DHS database shows that the applicant subsequently pled guilty to both Counts 1 and 2 on November 11, 1998.
2. On September 18, 2000, in Houston, Texas, the applicant was arrested and charged with driving while license suspended, 6687b-(34)(a) VCS, a Class B misdemeanor. The DHS database shows that the applicant subsequently pled guilty to this offense on September 20, 2000.

Based on information contained in the FBI report and the DHS database, the director determined that the applicant was ineligible for TPS because he was convicted of two or more misdemeanors.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the actual final court dispositions of the applicant's arrests to establish that he was, in fact, convicted of the crimes listed in the reports. Nor is there evidence in the record that the applicant was requested to submit the court documents of all of his arrests.

While counsel, on appeal, asserts that driving while license suspended (No. 2 above) is "nothing more than a violation," the DHS database shows that the level of this offense is a Class B misdemeanor, and that the applicant entered a plea of guilty to this offense. Pursuant to Texas Penal Code 12.21, a Class B misdemeanor is punishable by confinement in jail for a term not to exceed 180 days. Therefore, this offense is a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The case will be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of his arrests.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.