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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

MI

[REDACTED]

FILE: [REDACTED]  
[SRC 02 235 53698]

OFFICE: TEXAS SERVICE CENTER

DATE: OCT 24 2005

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. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. However, any removal order issued should take into consideration the applicant's current unrescinded order of supervision based upon his medical circumstances (bone marrow transplant to overcome leukemia).

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 she found the applicant ineligible for TPS under the Act due to his criminal conviction.

On appeal, counsel for the applicant makes a statement and submits 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.

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 record reveals the following offenses:

- (1) On February 10, 1997, the applicant was arrested by the Houston, Texas, Police Department and charged with Theft, Offense Report No. [REDACTED]
- (2) On July 20, 1998, the applicant was arrested by the Houston, Texas, Police Department and charged with Possession of Prohibited Weapon, Offense Report No. [REDACTED]
- (3) On March 17, 1999, an Order Revoking Community Supervision was issued, and the applicant was sentenced to 2 years confinement for the charge of “POSS EXPLOSIVE WEAPON – 1”.

The record confirms that the applicant pled guilty to the third degree felony charge, possession of a prohibited weapon, namely, a “Molotov cocktail,” committed on January 14, 1998. On July 22, 1998, the applicant was sentenced to 5 years probation. On March 17, 1999, the applicant was sentenced to 2 years confinement in the Texas Department of Criminal Justice Institutional Division. The record also

reflects that the applicant pled guilty to the Misdemeanor, Class B, charge of Theft - \$50-\$500, committed on February 11, 1997, and was convicted and sentenced to a fine and 8 days confinement in the Harris County Jail, Texas.

The director determined that the applicant was ineligible for TPS due to his felony conviction, and, therefore, denied the application on September 7, 2004.

On appeal, applicant's counsel states that the applicant was charged with possession of a prohibited weapon, a third degree felony, committed on January 14, 1998, and had another conviction for theft in 1997. Counsel asserts, however, that the director erred in denying the case. Counsel states that the applicant needs to remain under TPS in order to obtain necessary medical treatment following a bone marrow transplant for his serious medical condition. Counsel also asserts that the "applicant is a changed man," and needs TPS to support his four children. In support of the appeal, counsel submits a Harris County District Court Certificate of Disposition dated June 12, 2002, for the two charges listed above; additional documents regarding both charges; clinic notes dated November 29, 2000, from the Texas Department of Criminal Justice Institutional Division, regarding the applicant's bone marrow transplant of March 2000 and his need for ongoing treatment for five years; and, a prescription from Christus St. Joseph Hospital, Houston, Texas, dated September 12, 2004.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the record contains a Warrant of Removal/Deportation issued on September 22, 1999, at Huntsville, Texas, following the final order of removal issued by the Immigration Judge, Huntsville, Texas, on August 31, 1999, based upon his criminal sentence. On December 13, 2000, he was released from prison and placed under an Order of Supervision by the Immigration and Naturalization Service, because he had leukemia and had undergone a bone marrow transplant. This Order of Supervision was to be in effect for the "next five years," thus, still in effect until December 13, 2005, at a minimum. Any subsequent determination of continuation of the Order of Supervision should be based upon the applicant's medical prognosis. No subsequent criminal arrests, charges, or convictions, are noted for this applicant since the initial Warrant of Deportation (Removal) was issued.

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.