

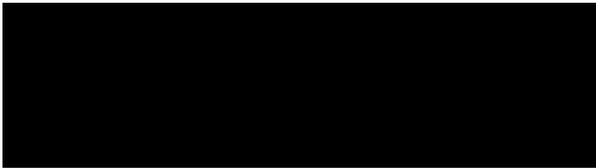
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 31 2005
[WAC 01 204 51879]

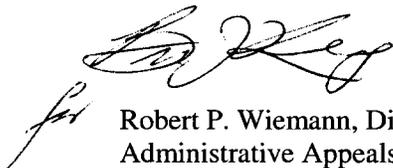
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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 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 the applicant had been convicted of two misdemeanors committed in the United States.

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 parole; 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 September 15, 1998, in the Municipal Court of Criminal Justice Central (LAC) Judicial, County of Los Angeles, California, Case No. 8CR30706 (arrest date September 10, 1998), the applicant was indicted for Count 1, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor; Count 2, preventing/dissuading witness or victim from reporting, 136.1(b)(1) PC, a misdemeanor; Count 3, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor; Count 4, preventing/dissuading witness or victim from reporting, 136.1(b)(1) PC, a misdemeanor; Count 5, willful cruelty to a child, 273a(b) PC, a misdemeanor; Count 6, willful cruelty to a child, 273a(b) PC, a misdemeanor; Count 7, willful cruelty to a child, 273a(b) PC, a misdemeanor; and Count 7, violence used against a former spouse, 242-243(e) PC, a misdemeanor. On November 30, 1998, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months under the condition that he serve 22 days in the county jail, ordered to pay \$300 in fines and costs, perform 23 days of “Cal Trans,” and enroll in a 12-month batterer’s counseling program and comply with that program. All other counts were dismissed.
- (2) On January 28, 2000, in the Superior Court of California, County of Los Angeles, Case No. 0SE00389 (arrest date January 11, 2000), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On February 1, 2000, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, ordered to pay \$1,077 in fines and costs, enroll and successfully complete a 3-month first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Count 1 was dismissed.
- (3) The Department of Homeland Security database and the Federal Bureau of Investigation fingerprint results report show that on February 2, 2001, in Lancaster, California, the applicant was arrested for Count 1, theft, 484(a) PC; and Count 2, failure to appear after written promise, 853.7 PC. While the reports show that the charges were subsequently dismissed, the actual final court disposition of this arrest is not contained in the record.

On appeal, the applicant states that he accepts his responsibilities but at the same time is asking for clemency, because without his work permit, he would not be able to work and support his family. He submits copies of progress reports relating to counseling programs attended, as ordered by the court.

The Administrative Appeals Office, however, is not the appropriate forum to grant a clemency involving the applicant's convictions. Rather, those issues are within the jurisdiction of the judicial court.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in Nos. 1, and 2 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 for this reason 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.