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JUN 28 2006

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 01 197 52478]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 or more misdemeanors.

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 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 June 7, 2003, the applicant was arrested in Los Angeles, California, and charged with: (1) one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; (2) 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; (3) and (4) two counts of hit and run/property damage in violation of section 20002(a) VC, both misdemeanors; (5) driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor; and, (6) driving without proof of automobile insurance in violation of section 16028(a) VC, an infraction. On July 3, 2003, the applicant pled nolo contendere in the Superior Court of California, County of Los Angeles, to Counts (2) and (3), both misdemeanors. Counts (1), (4), (5), and (6) were dismissed in the furtherance of justice pursuant to section 1385 PC. (Case Number [REDACTED])
2. On July 22, 2003, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol with a prior DUI conviction, in violation of section 23152(a) VC, a misdemeanor. On June 21, 2004, the applicant pled nolo contendere to this charge in the Superior Court of California, County of Los Angeles. (Case No. [REDACTED])

On appeal, the applicant states that he is learning from his past mistakes and regrets his criminal record. The applicant further states that he no longer drinks alcohol and requests that he be granted TPS. He submits the following:

1. a letter dated January 13, 2005, from [REDACTED], Program Director, [REDACTED] Programs in Los Angeles, California, stating that the applicant had been an active participant in his program since July 1, 2004, and was expected to complete the program in January 2006;
2. a photocopy of a Certificate of Completion from [REDACTED] indicating that the applicant attended the Hospital Component of the Youthful Drunk Driving Visitation Program, commonly known as the [REDACTED] on October 17, 2004;
3. a Certificate of Attendance dated October 8, 2004, from the Department of Coroner, County of Los Angeles, State of California, indicating that the applicant had participated in the "Youthful Drunk Driving Visitation" program; and,
4. an Alcoholics Anonymous (AA) meeting attendance record reflecting the applicant's attendance at AA meetings during the period from July 7, 2004 through January 14, 2005.

The applicant's statements on appeal are acknowledged; nevertheless, he remains 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.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.