

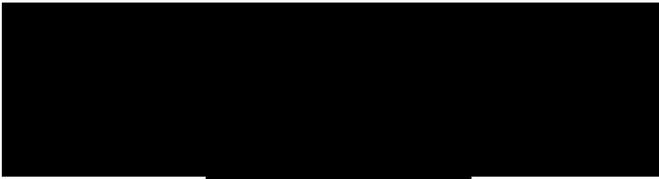
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**U.S. Citizenship
and Immigration
Services**

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FILE:



[WAC 05 155 71076]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

OCT 31 2006

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.

A handwritten signature in black ink, appearing to read "R. 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 three misdemeanor offenses.

On appeal, the applicant submits a statement.

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 September 12, 1995, the applicant was convicted in the Municipal Court of California, Santa Clara County Judicial District, State of California, of hit and run with property damage in violation of section 20002(a) VC, a misdemeanor. (Date of Arrest: June 2, 1995; Case Number [REDACTED])
2. On November 18, 1998, the applicant was convicted in the Municipal Court of California, Santa Clara County Judicial District, State of California, on 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, and one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Date of Arrest: August 9, 1998; Case Number [REDACTED])

On appeal, the applicant states that he was arrested for “vehicle code violations which have been dismissed pursuant of CPC 1210.”¹ The applicant contends that his two misdemeanor convictions do not constitute

¹ It is noted that the applicant that the applicant has not provided any evidence to corroborate his claim that his three misdemeanor convictions have been expunged.

convictions for immigration purposes pursuant to the court finding in *Lujan-Armendariz v. INS*, 222 F3d 728 (9th Cir. 2001).

The court found in *Lujan-Armendariz v. INS* that an alien's conviction on a simple first-time drug offense under the Federal First Offender Act (FFOA) or under state statute that has been expunged under the FFOA or under state rehabilitative statute does not constitute a "conviction" for immigration purposes. Since none of the applicant's convictions were simple first-time drug convictions, the court's finding in *Lujan-Armendariz v. INS* is not relevant to the facts of this case, and the applicant's three misdemeanor convictions constitute "convictions" for immigration purposes.

The applicant is ineligible for TPS due to his record of three misdemeanor convictions, detailed 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.

It is noted that the applicant previously applied for asylum and for withholding of removal on January 10, 1990. The application was denied on September 12, 2005, due to abandonment because the applicant failed to appear for his asylum interview. There is no indication in the record that a notice of appear has been issued to date.

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.