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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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FILE:

[EAC 07 001 70257]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 21 2008

IN RE:

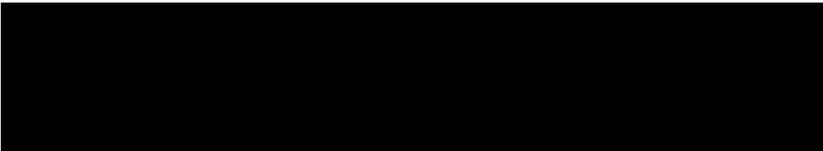
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 denied the application because he found the applicant ineligible for TPS because she has been convicted of at least two misdemeanors.

On appeal, counsel asserts that the applicant “has had misdemeanors related to unlicensed driver, which is not a serious crime of moral turpitude,” and as such, her application for TPS should be approved.

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).

The regulation at 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 March 18, 2004, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of California Vehicle Code 20001 and 20002(a), hit and run causing death or injury and hit and run property damage. She was sentenced to 36 months probation and ordered to pay restitution. Case number [REDACTED]
2. On August 31, 2005, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of California Vehicle Code 14601.1(a), driving with a suspended license. She was placed on 36 months probation and ordered to perform eight days physical labor with the California Department of Transportation. Case number [REDACTED]

3. On October 7, 2005, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of California Vehicle Code 12500(a), driving without a license. She was fined \$75. Case number [REDACTED]
4. On June 16, 2006, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of California Vehicle Code 14601.1(a), driving with a suspended license. She was placed on 36 months probation and ordered to pay a fine. Case number [REDACTED]

Counsel asserts on appeal that the applicant has not been convicted of a "serious crime of moral turpitude." Nonetheless, the applicable standard in this case is not whether the applicant has been convicted of a crime of moral turpitude. The Act stipulates that the applicant is ineligible because she has been convicted of at least two misdemeanors. The record reflects that the applicant has been convicted of five misdemeanors, including two convictions for hit and run. 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, it also is noted that the applicant has provided no evidence to establish her eligibility for late registration. Therefore, the application also must be denied for this reason.

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.