U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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[redacted]

APR 05 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 determined that the applicant was ineligible for TPS because he had been convicted of two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant submits court dispositions of his arrests.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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.
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> *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.
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> For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The record reflects the following:

1. On May 10, 2002, in the Municipal Court of Malibu Judicial District, County of Los Angeles, California, Case No. 2MA00336 (arrest date January 29, 2002), the applicant was convicted of unlicensed driver, in violation of 12500(a) VC, a misdemeanor. He was ordered to pay $305 in fines and costs.

2. On April 27, 2000, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, California, Case No. 0SM01275 (arrest date April 13, 2000), the applicant was convicted of the misdemeanor offense of grand theft, in violation of 487(a) PC. Imposition of sentence was suspended, and he was placed on probation for a period of 3 years with condition that he serves 30 days in jail, and pay restitution in the amount of $100. On June 30, 2000, the applicant's probation was modified and he was required to pay restitution in the amount of $2,300. The court record shows that the applicant violated the terms of his probation, and a bench warrant for his arrest was issued. On November 27, 2002, the court found the applicant in violation of his probation, his probation was revoked, and he was ordered to serve 90 days in jail.

3. On April 27, 2000, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, California, Case No. 9SM00978 (arrest date March 2, 1999), the applicant was convicted of unlicensed driver, in violation of 12500(a) VC, a misdemeanor. He was placed on probation for a period of one year with condition that he serves 22 days in jail.

4. On April 20, 2000, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, California, Case No. 2851152-01, the applicant was convicted of failure to appear, in violation of 40508(a) VC, a misdemeanor. He was sentenced to imprisonment for a term of 9 days, credit for 3 days time served.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his four misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.