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U.S. Department of Homeland Security

Citizenship and Immigration Services

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*ADMINISTRATIVE APPEALS OFFICE*
*CIS, AAO, 20 Mass, 3/F*
*425 I Street N.W.*
*Washington, D.C. 20536*

File: [redacted] Office: California Service Center Date: JAN 16 2004

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
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 indicated on his application that he entered the United States on February 14, 2000, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254, because the record established that the applicant had been convicted of three felonies in the United States.

On appeal, the applicant apologizes for his previous wrongdoings, and requests that his application be reconsidered.

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 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

 [redacted]

> (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses in the state of California:

(1) on September 13, 1994, the applicant was detained under the alias [redacted] for robbery, a violation of section 211 PC. On September 15, 1994, the applicant was released due to lack of corpus.

(2) on March 31, 1996, the applicant was arrested under the alias [redacted] for transportation/sale of a narcotic controlled substance, a violation of section 11352(A) H&S, and possession/purchase of cocaine base for sale, a violation of section 11351.5 H&S, both felonies. On September 3, 1997, the applicant was convicted of both offenses. On September 11, 1997, the imposition of sentence was suspended and the applicant was placed on probation for three years on condition he serve 19 days in the county jail and pay a fine. Case no. [redacted]

(3) on June 16, 1997, the applicant was arrested under the alias [redacted] for possession of a narcotic controlled substance, a violation of section 11350(A) H&S, a felony. On September 11, 1997, the applicant was convicted of the offense and sentenced to serve 16 months in prison. Case no. [redacted]

The applicant is ineligible for temporary protected status because of his felony convictions. 8 C.F.R. § 244.4(a). Because the applicant was convicted of crimes involving a controlled substances, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for

temporary protected status 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.