U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALFIRONIA SERVICE CENTER Date: OCT 2 6 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

ON BEHALF OF APPLICANT:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant expresses remorse for his past behavior and states that since those incidents, he has not broken any laws, he works full time, and he no longer drinks.

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 July 9, 2002, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [redacted] (arrest date March 16, 2002), the applicant was indicted for hit and run/property damage, in violation of 20002(a) VC, a misdemeanor. On November 25, 2002, the applicant was convicted of the offense. He was placed on probation for a period of 36 months, ordered to spend 10 days in the county jail, and pay a total of $865 in fines and costs.

2. On September 26, 2002, in the Municipal Court of Newhall Judicial District, County of Los Angeles, California, Case No. [redacted] (arrest date September 2, 2002), the applicant was indicted for Count 1, under influence of alcohol/drug in vehicle, in violation of 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent alcohol or more, in violation of 23152(b) VC, a misdemeanor. On October 16, 2002, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, and ordered to pay a total of $1,224 in fines and costs. Count 1 was dismissed.

3. The Federal Bureau of Investigation report, contained in the record of proceeding, shows that the applicant was arrested on November 27, 2002, by the Los Angeles Police Department, for "hit and run, property damage." The court disposition of this offense is not contained in the record. Nor is it clear in the record whether this case relates to the case described in No. 1 above.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.