



U.S. Citizenship  
and Immigration  
Services

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OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 16 2008

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously disapproved his application for re-registration. The matter 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 withdrew the applicant's TPS and denied the application for re-registration because he found the applicant ineligible for admission to the United States under Section 244(c)(2)(B)(i) because he had been convicted of two or more misdemeanors committed in the United States.

On appeal, counsel asserts that the applicant has not been convicted of a crime for immigration purposes, and that, alternatively, the traffic offenses of which he was convicted arose out of the same facts and circumstances.

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 July 29, 2002, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of section 2002 of the California Fish and Game Code. He was placed on summary probation for three years and fined \$200. The offense is punishable as a misdemeanor under the California law. Section 12000(a) of the Fish and Game Code.
2. On February 4, 2003, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of California Penal Code section 415, disturbing the peace. He was

ordered to pay a \$130 fine. A violation of section 415 is punishable by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than \$400, or both.

3. On September 27, 2005, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of the California Vehicle Code section 23152(b), driving a vehicle with a blood alcohol content of .08% or more. He received a suspended sentence of 10 days in the county jail, fined \$390, and placed on 36 months probation.
4. On September 27, 2005, the applicant was convicted in the Superior Court of California, County of Los Angeles, of a violation of the California Vehicle Code section 20002(a), hit and run with property damage. He was sentenced to 30 days in the county jail and placed on 36 months probation

On appeal, counsel states that the applicant had two convictions under the California Vehicle Code, and that as the offenses are not violations of the California Penal Code, they are not "crimes." Counsel argues that since these offenses are not crimes, they do not meet the definition of misdemeanor under 8 C.F.R. § 244.1, which defines "misdemeanor" as a crime.

Counsel's argument is without merit, as the offenses are described as "unlawful" conduct, are punishable in the criminal courts of California, and conviction carries with it a sentence of up to six months in the county jail. *See* section 23536 of the California Vehicle Code. Counsel further asserts:

[C]onviction for Vehicle Code violation 23152(B) has no outline of punishment that would qualify it as a misdemeanor under Section 244.1. There is no description or details that show what time period a violation of this section is punishable by. The determination is up to the discretion of the Judge.

This argument is also without merit. As noted above, section 23536 of the California Vehicle Code, authorizes punishment for this offense at no more than six months in the county jail. The statute grants the judge discretion as to the maximum punishable to be awarded and therefore does set a "time period" for punishment.

Counsel asserts, in the alternative, that the misdemeanor offenses arose from the same facts and circumstances, and therefore are not "disqualifying offenses."

The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled to two separate offenses. *Black's Law Dictionary*, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses.

Finally, counsel argues that the applicant received suspended sentences for his convictions for violating the California Vehicle Code. However, the period of time the applicant actually served for his offenses does not control whether an offense is a misdemeanor for immigration purposes. Pursuant to 8 C.F.R. § 244.1, a misdemeanor means a crime committed in the United States that is punishable by imprisonment for a term of one year or less, regardless of the term actually served.

We note that neither the director nor counsel addressed the applicant's 2002 conviction for unauthorized possession of a bird and his 2003 conviction for disturbing the peace. These convictions also render the applicant ineligible for admission into the United States.

The applicant is ineligible for TPS due to conviction of at least two misdemeanors, as 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 withdraw the applicant's TPS and deny the re-registration application for this reason 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.