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



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 01 215 50625]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: 09 29 2005

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:

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 denied the application because the applicant had been convicted of either a felony or two or more misdemeanors.

On appeal, the applicant requests that he be granted TPS because his family depends on him for economic and moral support.

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).

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On May 16, 1995, in the Superior Court of California, County of Fresno, Criminal Department, Firebaugh Division, Case No. [REDACTED] (arrest date April 20, 1995), the applicant was indicted for Count 1, assault: semi-auto rifle, 245(b) PC; and Count 2, assault: semi-auto rifle, 245(b) PC. On June 27, 1995, the court amended the charges to the lesser offense of carrying a concealed weapon within a vehicle, 12025(a)(1) PC, a misdemeanor. On June 27, 1995, the applicant was convicted of 12025(a)(1) PC. He was placed on conditional sentence for a period of 36 months, and ordered to pay the total of \$1,245 in fines and costs.
- (2) On August 2, 1995, in the Superior Court of California, County of Fresno, Criminal Department, Firebaugh Division, Case No. [REDACTED] the applicant was indicted for battery, 242 PC, a misdemeanor. On November 6, 1995, the applicant was convicted of the offense. He was placed on probation for a period of 3 years, sentenced to serve 180 days in jail, ordered to pay \$335 in fines and costs, and attend and complete domestic violence program.
- (3) On July 1, 1996, in the Central Valley Municipal Court, Firebaugh Division, California, Case No. [REDACTED] the applicant was indicted for inflicting corporal injury on spouse/cohabitant, 273.5 PC, a felony. On September 24, 1996, the court amended the felony charge to a misdemeanor. The applicant was convicted of the misdemeanor offense of 273.5 PC. He was placed on probation for a period of 3 years, sentenced to 180 days in jail, ordered to pay \$600 in fines, costs and restitution fee, and take and complete a "batterer's program."

- (4) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on September 24, 1996, in Fresno, California, the applicant was arrested for Count 1, battery; Count 2, battery; and Count 3, inflicting injury to a spouse/cohabitant. The court's final disposition of this arrest is not contained in the record. Nor is the record clear whether this case relates to No. 3 above.
- (5) The FBI report shows that on September 18, 1997, in Firebaugh, California, the applicant was arrested for the felony offense of inflicting injury on a spouse/cohabitant. The court's final disposition of this arrest is not contained in the record.
- (6) On February 15, 2000, in the Superior Court of California, County of Fresno, Case No. [REDACTED] the applicant was indicted for Count 1, battery against a spouse, 243(e)(1) PC, a misdemeanor; and Count 2, public intoxication, 647(f) PC, a misdemeanor. On February 29, 2000, the applicant was convicted of Count 1. He was placed on probation for a period of 3 years, sentenced to serve 180 days in jail, ordered to pay \$385 in fines and costs, and attend a year-long batterer's treatment program. Count 2 was dismissed.

The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions. 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 will be affirmed.

The record of proceeding contains an outstanding Warrant of Deportation, Form I-205, issued on October 26, 1995, and that the applicant failed to appear at the San Francisco district office on January 14, 1997, for his enforced departure. The record also contains an adjudicated Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.

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.