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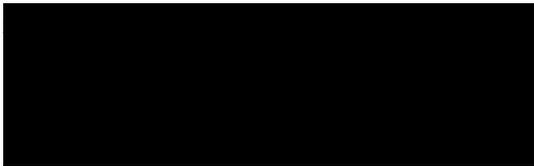


FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 29 2005
[WAC 01 198 53517]

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:



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 states that he has lived in the United States since 1977, he is married, he is a good citizen, he has been paying his taxes since 1982, and he would like to continue working with a work permit.

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 June 11, 1990, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 27, 1990), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, no proof of car insurance, 16028(a) VC, an infraction. The indictment report included: "Alleged prior conviction on Count 01 for 23152(a) VC- and inflnce alchl/drug in veh on 08/10/84 in Compton Municipal Ct Judicial District under Case Number [REDACTED] On December 21, 1990, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, and his driving was restricted for 365 days. Counts 1 and 3 were dismissed.
- (2) On October 31, 1995, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Cas [REDACTED] (arrest date October 28, 1995), the applicant was indicted for Count 1, carrying a concealed firearm on his person, 12025(a)(2) PC, a misdemeanor; and Count 2, carrying a loaded firearm in a public place, 12031(a) PC, a misdemeanor. On October 31, 1995, the applicant was convicted of Count 2. He was placed on probation for a period of 24 months, ordered to spend 4 days in the county jail, perform 11 days of "Cal Trans," and pay \$100 in restitution fine. Count 1 was dismissed.
- (3) On December 18, 1995, in South Gate, California, the applicant was arrested for burglary, 459 PC, a felony. Prosecution on the case was rejected on December 21, 1995.

- (4) On November 20, 1996, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 18, 1996), the applicant was convicted of driving with suspended license, 14601(a) VC, a misdemeanor. He was placed on probation for a period of 12 months, ordered to perform 10 days of community service, and pay \$100 in fines and costs.
- (5) On September 4, 2001, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 22, 2001), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, driving with suspended license, 14601.1(a) VC, a misdemeanor. On March 6, 2002, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to spend 18 days in the county jail, successfully complete a 3-month first-offender alcohol and drug education and counseling program, and pay \$100 in restitution fine. Counts 1 and 3 were dismissed.

The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions, 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 deny the 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.