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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 16 2005
[WAC 01 148 52746]

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 two misdemeanors committed in the United States.

On appeal, counsel submits a statement.

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.

The record reveals the following offenses:

- (1) On February 15, 1994, in the Municipal Court of Culver Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 12, 1994), the applicant was indicted for possession/etc. of burglary tools, 466 PC, a misdemeanor. On January 3, 1996, the court ordered the complaint amended to add 415(1) PC, challenge to fight in public, as to Count 2. The court found the applicant guilty of Count 2. He was sentenced to serve 15 days in the county jail, and fined \$100. Count 1 (466 PC) was dismissed.
- (2) On April 25, 1994, in the Municipal Court of Inglewood Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 10, 1994), the applicant was convicted of driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor. He was placed on probation for a period of 3 years, ordered to pay \$1,050 in fines and costs, and enroll and successfully complete a 3-month licensed first-offender alcohol and drug education and counseling program.

On appeal, counsel asserts that the applicant was not convicted of any felony or two or more misdemeanors. Counsel resubmits copies of court documents and states that the applicant's conviction of § 415(1) PC (No. 1 above), is an infraction, not a misdemeanor.

California Penal Code § 415 states that any person who violates this section (this includes 415(1) PC) shall be punished by **imprisonment in the county jail for a period of not more than 90 days**, a fine of not more than \$400, or both such imprisonment and fine.

Because the applicant was convicted of an offense for which he could have received a jail sentence of more than five days, he has, for immigration purposes, been convicted of a misdemeanor. 8 C.F.R. § 244.1.

The applicant is, therefore, ineligible for TPS due to his two 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.

The record of proceeding contains an outstanding Warrant of Deportation, Form I-205, issued on March 26, 1997, and that the applicant failed to appear at the Los Angeles district office on April 14, 1997, for his enforced departure.

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.