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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]
[WAC 02 196 53091]

OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 12 2005

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: 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. 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 denied the application because he found the applicant had been convicted of a felony offense.

On appeal, the applicant submits a statement and additional evidence.

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, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

1. On May 4, 2000, the applicant was arrested in Simi Valley, California, and charged with one count of possession of a controlled substance and one count of petty theft. The record does not contain a court document indicating the final disposition of these charges.
2. On May 5, 2001, the applicant was arrested in Ventura, California, and charged with one count of possession of a controlled substance in violation of section 11377(a) HS, a felony, and one count of petty theft in violation of section 484(a) PC, a misdemeanor. On May 8, 2001, the applicant pled guilty to both charges in the Superior Court of California, County of Ventura. (Case Number [REDACTED] A).
3. On October 22, 2003, the applicant was arrested in Ventura, California, and charged with one count of vandalism with property damage. On October 24, 2003, the complaint was rejected in the Superior Court of California, County of Ventura. (Case Number [REDACTED])

On appeal, the applicant states that he has completed the conditions of his probation and the charges detailed in No. 2 above have been expunged. He further states that he now lives an honest life and regrets his past behavior. The applicant submits a document from the Superior Court of California, County of Ventura,

indicating that the applicant has fulfilled all the conditions of probation, and the charges detailed in No. 2 above have been expunged.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). In this case, the charges were not expunged based on the merits of the case, but rather because the applicant completed the conditions of his probation. Therefore, the applicant remains convicted of the offenses in No. 2 above for immigration purposes.

The applicant is ineligible for TPS due to his record of one felony conviction, detailed in No. 2 above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

While the director did not raise the issue of the applicant's inadmissibility, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(I)(II) of the Act based on his drug-related conviction in No. 2 above. There is no waiver available for inadmissibility under this section of the Act. Therefore, the application must also be denied for this reason.

Additionally, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of a felony and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

It is noted that the record indicates that the applicant was apprehended in Los Angeles by officers of the Immigration and Naturalization Service (now ICE) and placed in deportation proceedings. There is no indication in the record of proceeding whether a removal proceeding was ever held.

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.