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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 01 202 56280]

OFFICE: CALIFORNIA SERVICE CENTER DATE: FEB 09 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:

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 application 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 that the applicant had been convicted of two or more misdemeanor offenses.

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 April 16, 1978, the applicant was arrested in Santa Ana, California, for tampering with an auto. The final disposition of this charge is not known.
- (2) On October 16, 1980, the applicant was convicted in the Municipal Court, Ventura Judicial District, County of Ventura, State of California, of drunk driving on a highway in violation of section 23102(a) VC, a misdemeanor. (Date of Arrest: September 12, 1980; Docket Number [REDACTED])
- (3) On June 18, 1986, the applicant was convicted in the Ventura County Superior Court, State of California, of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor. (Date of Arrest: May 26, 1986; Docket Number [REDACTED])
- (4) On February 9, 1989, the applicant was convicted in the Central Municipal Court, Central Orange County Judicial District, of failure to appear in violation of section 40508(a) VC, a misdemeanor. (Date of Arrest: October 13, 1988; Docket Number [REDACTED])
- (5) On February 14, 1989, the applicant was convicted in the Municipal Court, Central Orange County Judicial District, of driving under the influence of alcohol with a

prior conviction in violation of section 23152(a), a misdemeanor. (Date of Arrest: January 13, 1989; Docket Number [REDACTED])

On appeal, counsel states that the applicant's last misdemeanor conviction for driving under the influence of alcohol was over 15 years ago, and the applicant is in the process of obtaining expungements.

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).

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, 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 two misdemeanors 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 applicant was previously deported from the United States on July 6, 1973.

It is further noted that the applicant was granted temporary residence under section 245a of the Act on June 5, 1989. On May 7, 1990, the applicant submitted Form I-698, Application to Adjust Status to Permanent Resident.

On February 14, 1992, the applicant's temporary residence was terminated because the applicant failed to provide the disposition of two criminal charges or any evidence to overcome a finding that he was ineligible for temporary residence because he had been convicted of two or more misdemeanors.

On March 4, 1992, the matter was reopened by the Director of the Western Regional Processing Facility (now the California Service Center). On February 11, 1993, the director found that the applicant was ineligible for temporary residence due to his conviction of two or more misdemeanors and terminated the applicant's temporary resident status. On the same date, the director denied the application for permanent residence because the applicant had been determined to be ineligible for permanent residence due to his misdemeanor convictions.

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.