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: [redacted] OFFICE: TEXAS SERVICE CENTER DATE:
[SRC 02 275 54643]

JAN 07 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:

[redacted]

PUBLIC COPY

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application was denied by the Director, Texas 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 failed to submit requested court documentation relating to his criminal record.

On appeal, counsel 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 pubic 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.
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> *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.
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> 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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

1. On June 4, 1990, the applicant was arrested in Galveston, Texas, and charged with driving under the influence of liquor, a misdemeanor. It appears from the Federal Bureau of Investigation (FBI) Identification Record, the applicant was convicted of this charge; however, the actual court disposition for this offense has not been provided.
2. On September 19, 1992, the applicant was arrested in Houston, Texas, and charged with driving while intoxicated, a Class 4 Misdemeanor. The applicant pled guilty to this offense on January 19, 1993. (Case #924555801010).
3. On July 1, 1993, the applicant was charged with driving while his license was suspended, a misdemeanor. He pled guilty to this charge on August 6, 1993. (Case # 9327042201010).
4. On March 17, 1995, the applicant was charged with driving while his license was suspended, a misdemeanor. He pled guilty to this charge on March 21, 1995. (Case # 951095701010).

Pursuant to a letter dated November 7, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on January 14, 2004.

On appeal, counsel states that the applicant has lived in Knoxville, Tennessee, for over five years. Counsel submits a police clearance letter dated December 3, 2003, from the Knoxville Police Department, Record Bureau, stating that a search by their records division revealed no criminal record under the nam

Also on appeal, counsel states that the applicant's conviction in No. 2 above was dismissed on April 1, 1993. In support of his assertion, counsel submits a copy of a document purportedly from County Court No. 2 of Galveston, County, Texas relating to the April 1, 1993, dismissal of a charge of driving while intoxicated against This document bears no stamps, seals, or any other marking that would indicate that was issued by the court. Secondly, while this document bears two identification numbers ("112,420" typed on the document, and "610 33 2159" stamped on the document), neither of these numbers relates to the offense in No. 2 above. Thirdly, the purported dismissal document identifies the defendant as while the court record submitted by the applicant for the offense in No. 2 above indicates that the applicant was convicted under the name Fourthly, it appears that the court document detailing the conviction in No. 2 above was issued to the applicant by the Harris County Criminal Court, Texas; therefore, it is not likely that the purported dismissal from Galveston County would relate to this offense. Finally, even if the dismissal document is authentic and relates to the applicant's conviction on April 1, 1993, counsel has not provided any evidence to establish that the charge was dismissed on the merits of the case and not just as a post-conviction rehabilitative remedy. 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).

Counsel, on appeal, also requests "a waiver of these crimes" because the denial of the applicant's TPS application would cause him extreme hardship as his wife, who is a United States citizen, suffers from "numerous mental conditions." However, there is no waiver available to an alien who fails to satisfy the basic statutory eligibility requirements in section 244(c)(2)(B)(i) of the Act.

The applicant is ineligible for TPS due to his record of at least three misdemeanor offenses detailed in Nos. 2, 3 and 4 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.