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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

MI

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: JAN 18 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]

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, Vermont 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 determined that the applicant had failed to respond to a request to submit court dispositions of criminal charges made against him. The director, therefore, denied the application.

On appeal, counsel submits copies of court records.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

- (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of...
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The record reflects the following:

1. On August 8, 1995, in the First District Court of Nassau County, New York, Docket No. [REDACTED] the applicant was convicted of (1) VTL 1192.1, driving while ability impaired, a misdemeanor, and (2) VTL 511.2, aggravated unlicensed operation of a motor vehicle in the second degree, a misdemeanor. He was placed on probation for a period of one year, ordered to spend 30 days in jail, pay \$300 in fines and costs, and his driver's license was revoked.
2. On May 6, 1993, in the First District Court of Nassau County, New York, Docket No. [REDACTED] the applicant was convicted of VTL 1192.2, operating a motor vehicle while under the influence of drug or alcohol (.10 of one per centum or more by weight of alcohol in the person's blood), a misdemeanor. He was placed on probation for a period of 3 years, pay \$250 in fine or spend 15 days in jail, and his driver's license was revoked.
3. The Federal Bureau of Investigation (FBI) fingerprint results report shows that on January 1, 1988, in Mineola, New York, the applicant was arrested and charged with 3 counts of assault in the 2nd degree.

The FBI report shows that the applicant was convicted of this offense. However, the actual court disposition is not contained in the record of proceeding although the applicant was requested on May 15, 2003, to submit the court documents for every charge against him.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least three misdemeanor convictions, and based on his failure to comply to the director's request to submit the final court dispositions of all his arrests. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Therefore, counsel's statements, on appeal, that the applicant may be eligible for a waiver and that the application be remanded to process the TPS for waiver, is without merit.

It is noted in the record that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on August 22, 1985, in New York, New York, based on the applicant's entry into the United States without inspection on or about September 1984.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.