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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

**PUBLIC COPY**

M

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

JUL 01 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 misdemeanors committed in the United States.

On appeal, counsel argues that the applicant has only been convicted of one misdemeanor and submits a copy of the final court disposition in two of the four criminal cases.

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.  
8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On January 9, 1998, the applicant was found guilty in the Virginia State Court of domestic assault and battery;
- (2) On August 31, 1994, the applicant was found guilty in the Virginia State Court of petit larceny;
- (3) On September 22, 1992, the applicant was found guilty in the Virginia State Court of hit and run; and
- (4) On August 19, 1992, the applicant was found guilty in the Virginia State Court of operating an uninsured vehicle.

Pursuant to a letter dated October 23, 2002, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted a Virginia State Police Department Record of Criminal Dispositions, which listed the four convictions noted above.

The director determined that the applicant had been "convicted of two or more misdemeanors committed in the United States" and denied the application on July 9, 2003.

On appeal, counsel argues that the evidence demonstrates that the applicant has only been convicted of one misdemeanor and therefore, qualifies for TPS status. To substantiate his claim, counsel submits a copy of the court disposition in the domestic assault and battery case, and in the petit larceny case.

Contrary to counsel's argument, the record reveals that the applicant has been convicted of at least two misdemeanor offenses in the United States. Although counsel submitted the court disposition for No. 1 above which bears the hand-written note "Case Dismissed 10/8/98," the record shows that the applicant plead guilty, and was tried and found guilty as charged by [REDACTED] on January 9, 1998, and that his liberty was restrained in that he was placed on probation or court supervision to enter and complete programs as directed by the CSU. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act. 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*, I.D. 3377 (BIA 1999). An applicant who has been convicted of at least two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of at least two misdemeanor offenses, and therefore, the director's decision to deny the application 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.