

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: JUN 10 2005
[SRC 01 213 55590]

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
Robert P. Wiemann, Director
Administrative Appeals Office

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 she found the applicant to have been convicted of two or more misdemeanors.

On appeal, the applicant 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

On July 18, 1998, the applicant was arrested by the Dalton, Georgia, Police Department and was charged with:

1. Charge 1 – RECKLESS DRIVING;
2. Charge 2 – NO DRIVERS LICENSE;
3. Charge 3 – NO PROOF OF INSURANCE;
4. Charge 4 – DRIVING UNDER THE INFLUENCE; and,
5. Charge 5 – LAYING DRAG.

On January 8, 2004, the applicant was requested to provide certified final court dispositions for all of the charges against him. In response, the applicant provided the following documentation:

1. A Municipal [REDACTED] July 18, 1998
2. A Municipal [REDACTED] July 18, 1998, Charge 1 – Driving without a License, indicating a guilty finding, a fine and 6 months probation;

3. A Municipal Court of Dalton, Georgia, Certified Disposition dated January 21, 2004, for Offense Date of July 18, 1998, Charge 1 - DUI, indicating a guilty finding, 40 hours of community service, jail time of 24 hours, a fine and 12 months probation;
4. A Municipal Court of Dalton, Georgia, Certified Disposition dated January 21, 2004, for Offense Date of July 18, 1998, Charge 1 - Laying Drags, indicating a guilty finding, a fine and 6 months probation;
5. A Municipal Court of Dalton, Georgia, Certified Disposition dated January 21, 2004, for Offense Date of July 18, 1998, Charge 1 - No Insurance, indicating a guilty finding, a fine and 12 months probation; and,
6. A Dalton Police Department, Dalton, Georgia, police records search dated January 26, 2004, reflecting the applicant's DUI arrest on July 18, 1998, and the following additional charges:
 - Arrest: Obstruction-Hindering Littering on 10-09-99;
 - Citation: Open Alcohol on 02-11-00; and,
 - Citation: Open Container on 10-03-02.

On appeal, the applicant states that his record has been clean for almost seven years. He admits having committed misdemeanor offenses, but states that he has learned the lesson and has tried to have an excellent record since July 1998. He asks that his TPS be granted.

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.

It is also noted that the Dalton Police Department records search included additional charges for which the applicant did not provide certified final court dispositions.

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.