

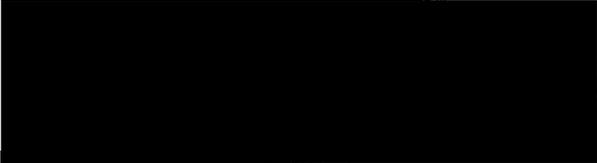


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 01 163 54760]

Office: TEXAS SERVICE CENTER

Date: JUN 24 2005

IN RE: Applicant: [REDACTED]

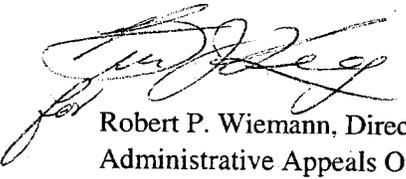
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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 the applicant was convicted of a felony and two or more misdemeanors committed in the United States.

On appeal, the applicant acknowledges that he has been charged and found guilty of a felony but states that he has learned from his past mistakes and that his removal from this country would cause an unacceptable burden to his wife and daughter. He requests that his application be approved.

The applicant submits a copy of his daughter's birth certificate in support of his application.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On October 22, 1998, the applicant was convicted of Driving While Intoxicated – Subsequent Offense, [REDACTED] a felony, by a presiding judge of the 410th Judicial District of the District Court of Montgomery County, Texas.
- (2) On December 3, 1996, the applicant was convicted of Forgery, [REDACTED] a misdemeanor, by a presiding judge of the 183rd District Court of Harris County, Texas.
- (3) On December 3, 1996, the applicant was convicted of another count of Forgery, (Cause [REDACTED] a misdemeanor, by a presiding judge of the 183rd District Court of Harris County, Texas.
- (4) On April 16, 1993, the applicant was convicted of Assault, (No [REDACTED] a misdemeanor, by a presiding judge of the 228th District Court of Harris County, Texas.

The applicant is ineligible for TPS due to his record of one felony and three misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Consequently, the director's decision to deny the application for this reason is affirmed.

It is noted that on June 30, 1994, the applicant was granted the opportunity to voluntarily leave the United States by December 30, 1994 by an immigration judge in Houston, Texas. The judge's order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to El Salvador. The applicant did not depart this country and a Warrant of Deportation dated March 20, 1995 was issued for his arrest by the District Director of the Houston, Texas office of Citizenship and Immigration Services (formerly, the Immigration and Naturalization Service).

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has not provided a copy of his birth certificate along with an English translation, nor does the record contain copies of the applicant's passport or national identity documentation. Additionally, the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the required time period. Therefore, the application shall be denied for these additional reasons.

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.