

Identifying data deleted to
prevent clear & straightforward
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



PUBLIC COPY

MAR 07 2005

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 02 111 55118]

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, California 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 denied the application because he was convicted of two misdemeanors committed in the United States.

On appeal, counsel asserts that all convictions have been expunged. Counsel requests oral argument in this case. He states that oral argument is necessary in order to present documentary evidence of the applicant's compliance with his conditions of probation, and the expungement of all convictions on his record, and provide explanation of the significance of the documents.

A request for oral argument must set forth facts explaining specifically why oral argument is necessary. 8 C.F.R. § 103.3(b). In this case, no cause for oral argument is shown. Counsel has clearly constructed his arguments on appeal and has furnished expungement records of the applicant's convictions. Therefore, counsel's request for oral argument is denied.

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.

The record reveals the following offenses in the State of California:

- (1) On April 6, 1992, [REDACTED] (arrest date March 15, 1992), the applicant was convicted of willful disobedience of any process or order lawfully issued by any court, 166.4 PC, a misdemeanor. He was placed on probation for a period of 24 months, and ordered to spend 21 days in jail. Because the applicant fulfilled the conditions of his probation, the case was dismissed on March 1, 2002.
- (2) On June 13, 1983, [REDACTED] the applicant was convicted of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. He was placed on probation for a period of 36 months. Because the applicant fulfilled the conditions of his probation, the case was dismissed on May 10, 1995.

The record of proceeding contains the following convictions in California that were not addressed by the director in his decision:

- (3) On April 17, 1978, Docket No. [REDACTED] (arrest date October 16, 1977), the applicant was convicted of failure to appear, 40508(a) VC, a misdemeanor. He was ordered to pay a fine.
- (4) December 20, 1978, Docket No. [REDACTED] (arrest date October 6, 1978), the applicant was convicted of failure to appear, 40508(a) VC, a misdemeanor. He was ordered to pay a fine.

Because more than one year had elapsed since the date of pronouncement of judgment, and the applicant had complied with the sentence of the court, the case was dismissed on October 12, 1995.

- (5) On April 25, 1984, [REDACTED] the applicant was convicted of driving under the influence, 23152(a) VC, a misdemeanor. He was placed on probation for a period of 36 months.
- (6) On July 28, 1986, [REDACTED] the applicant was convicted of driving with .08 percent blood alcohol level or more, [REDACTED]. He was placed on probation for a period of 36 months.

The record shows that the applicant's convictions, detailed in Nos. 1, 2, and 4 above, were dismissed or expunged. 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). Despite the expungements of the applicant's convictions, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses listed in Nos. 1, 2, and 4 above.

The applicant is ineligible for TPS due to his record of at least six misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act. Consequently, the director's decision to deny the application will be affirmed.

It is noted that an Order to Show Cause and Notice of Hearing, Form I-221S, was issued on April 8, 1992, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about October 1976.

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.