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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:

[WAC 01 172 58802]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 25 2005

IN RE:

Applicant:

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.

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, 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 the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant requests reconsideration because he has been taking "classes from alcoholic" and he continues to take the instruction as ordered by the court, and that he had paid his fines.

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:

- (1) On August 21, 2001, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 13, 2001), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On September 4, 2001, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 3 years, ordered to spend 48 hours in the county jail, and pay \$1,168 in fines and costs as to Count 2. He was placed on probation for a period of 3 years, and ordered to pay \$406 in fines and costs as to Count 3. Count 1 was dismissed.
- (2) On July 8, 2002, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 29, 2002), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with suspended license, 14601.2(a) VC, a misdemeanor. On August 15, 2002, the applicant was convicted of both Counts 1 and 2. He was placed on probation for a period of 3 years, ordered to serve 30 days in the county jail, pay \$1,077 in fines, costs and restitution, participate in an 18-month program of any treatment or counseling, and driving was restricted for 18 months, as to Count 1. He was placed on probation for a period of 3 years, ordered to serve 30 days in the county jail, and pay \$811 in fines and costs, as to Count 2.

The applicant is ineligible for TPS due to his four misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.