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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: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 28 2005**  
[WAC 01 197 51676]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 the applicant had 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.

The record reveals the following offenses:

- (1) On September 19, 1996, the applicant was arrested in Los Angeles, California, and charged with driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor, and one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. On October 18, 1996, the case was amended in the Municipal Court of Los Angeles, County of Los Angeles, State of California, to include a third count, exhibition of speed in violation of section 23109(c) VC, a misdemeanor. Counts one and two were dismissed in the furtherance of justice, and the applicant was convicted of exhibition of speed in violation of section 23109(c) VC, a misdemeanor. (Docket Number [REDACTED])
- (2) On April 27, 2002, the applicant was arrested in Huntington Park, California, and charged with one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor, and one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or higher in violation of section 23152(b) VC, a misdemeanor. On May 17, 2002, the applicant was convicted in the Municipal Court of Southwest - Huntington Park Judicial District, County of Los Angeles, State of California, of count two, driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. Count one was dismissed due to plea negotiation. (Docket Number [REDACTED])

On appeal, the applicant states that one of the misdemeanors was more in the nature of an infraction because it was a speeding offense. He further states that he has had a completely clear record for the past two years.

The applicant's statements are acknowledged. Nevertheless, the California Vehicle Code clearly shows that both of the applicant's convictions are considered misdemeanors. Therefore, the applicant is ineligible for TPS due to his record of two 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.

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.