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



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 28 2005**
[WAC 01 174 50867]

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.

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 (AAO) 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 found that the applicant had been convicted of a felony offense.

On appeal, the applicant submits additional evidence.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The Federal Bureau of Investigations (FBI) report, contained in the record of proceeding, reflects the following:

1. On August 21, 1985, the applicant was arrested in Inglewood, California, and charged with possession of a narcotic controlled substance for sale in violation of section 11351 HS. The charge was subsequently dismissed in the Municipal Court of Inglewood, State of California.
2. On September 14, 1994, the applicant was arrested in Los Angeles, California, and charged with felony wife beating.
3. On December 25, 1994, the applicant was arrested in Los Angeles, California, and charged with wife beating in violation of section 273.5(a) PC, a felony. The FBI record indicates that the applicant was not charged with this offense due to lack of sufficient evidence.
4. On July 2, 1995, the applicant was arrested in Los Angeles, California, and charged with one count of inflicting corporal injury on his spouse or cohabitant in violation of section 273.5(a) PC, a felony. The charge was reduced to a misdemeanor and on July 5, 1995, the applicant was convicted in the Municipal Court, Metro Los Angeles. (Docket [REDACTED])
5. On December 7, 1996, the applicant was arrested in Los Angeles, California, and charged with giving false information to a peace officer, a misdemeanor, and unlicensed driving in violation of section 12500(a) VC, a misdemeanor. (Docket [REDACTED]) On December 9, 1996, the applicant was convicted of unlicensed driving.
6. On May 2, 2002, the applicant was arrested in Los Angeles, California, and charged with one count of inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, and one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he had been convicted of a felony, detailed in (4) above.

On appeal, the applicant submits the final court disposition of the charges detailed in Nos. (4) and (5) above. According to these documents, the felony charge in No. (4) above was reduced to a misdemeanor of which the applicant was convicted. While the director erred in his finding that the applicant had been convicted of a felony, the evidence submitted by the applicant confirms that he has been convicted of at least two misdemeanors.

Even though the applicant has not provided the final court dispositions of all the offenses detailed above, he has provided sufficient evidence to establish that he is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application 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.