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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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[redacted]

FILE: [redacted] [EAC 01 244 52314] OFFICE: VERMONT SERVICE CENTER DATE: MAR 28 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: 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

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DISCUSSION: The application was denied by the Director, Vermont 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 a felony committed in the United States.

On appeal, the applicant states that he needs to work because his wife and four-year-old son depend on him for support.

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 pubic 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.
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> *Misdemeanor* means a crime committed in the United States, either
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> (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.
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> 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.

The record reveals the following offenses:

(1) On January 13, 1999, in the Circuit Court of Maryland, County of Montgomery, Case No. [redacted]rrest date August 15, 1998), the applicant was convicted of assault in the second degree. He was placed on probation for a period of 4 months.

(2) On December 8, 2002, in the District Court of Maryland, Montgomery County, Case No. [redacted]he applicant was convicted of driving a motor vehicle on highway on suspended license and privilege, a misdemeanor. He was ordered to pay $555 in fines and costs.

(3) The applicant submitted a "Defendant Probation Summary" indicating that on December 8, 2000, in the District Court of Maryland, Montgomery County, Case No. [redacted] the applicant was advised that he was placed on supervised probation, and to report to his probation agent on December 15, 2000. The type of offense committed by the applicant is not reflected on this court document. Nor did the applicant furnish the arrest report and the court's final disposition of the offense.

(4) The applicant indicated on his TPS application that he "had a DWI back on 10/2002. I am in probation now." The arrest report and the court's final disposition of this offense is not included in the record although the applicant was requested on June 6, 2002, to submit the final court dispositions of all charges against him.

The director denied the application after determining that the applicant was convicted of assault in the second degree (No. 1 above), a felony offense.

Maryland Criminal Law § 3-203 states that "a person who violates this section is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $2,500 or both." While 8 C.F.R. § 244.1 defines a "felony" as a crime punishable for a term of more than one year, the regulation provides for an exception 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. In this case, assault in the second degree is defined by the State of Maryland as a misdemeanor and the applicant was sentenced to probation for a period of 4 months. Therefore, the applicant qualifies for this exception, pursuant to section 244 of the Act, and the crime shall be treated as a misdemeanor for immigration purposes. Therefore, the finding of the director that the applicant was convicted of a felony offense will be withdrawn.

On appeal, the applicant resubmits the court documents relating to No. 1 above. He failed to submit the final court dispositions of Nos. 3 and 4 above.

The applicant, however, is ineligible for TPS due to his record of at least two misdemeanor convictions and because he failed to provide the final court disposition of his arrests (Nos. 3 and 4 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 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.