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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 02 2005
[WAC 01 276 54769]

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 that the applicant had been convicted of two or more misdemeanor offenses.

On appeal, the applicant submits a statement and 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, 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.

The record reveals the following offenses:

- (1) On June 3, 1998, the applicant was convicted in the Municipal Court for the Alameda Judicial District, County of Alameda, of possession of a controlled substance in violation of section 11350(b) HS, a misdemeanor. (Arrest Date: May 11, 1998; Docket # [REDACTED])
- (2) On June 3, 1998, the applicant was convicted in the Municipal Court for the Alameda Judicial District, County of Alameda, of driving a vehicle under the influence of alcohol and/or drugs in violation of section 23152(a) VC, a misdemeanor. (Arrest Date: May 11, 1998; Docket [REDACTED])

On appeal, the applicant states that he believes the denial of his application because of his misdemeanor convictions is "a bit to[o] hard, since the violation is a misdemeanor." He submits a document dated February 2, 2004, from [REDACTED] Trial Court Administrator of the Superior Court of California, County of

Alameda, indicating that the applicant has been convicted of two misdemeanors in violation of sections 11350(B) HS and 23152(a) VC, respectively. According to this document, offense (1) detailed above was reduced from a felony to a misdemeanor, and the applicant was sentenced to 10 days in jail, a \$1175 fine, and 5 years court probation.

The applicant 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 for this reason will be affirmed.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction detailed in No. (1) above. While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(I)(II) of the Act. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, failed to disclose on Part 4, Line 2.a., and d., of his application for TPS that he had been convicted of two misdemeanors and that he had been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act. As the appeal will be dismissed on the grounds discussed, this issue will not be addressed further.

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.