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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] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 03 2005
[WAC 01 164 50419]
[WAC 02 105 54918]
[WAC 03 066 54579]

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:

[redacted]

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 application filed three Forms I-821, Application for Temporary Protected Status, on the following dates: March 19, 2001; February 4, 2002; and December 20, 2003.

The director denied all three applications on February 27, 2004, because he found that the applicant had been convicted of two or more misdemeanor offenses.

On appeal, the applicant submits a brief.

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.
>
> *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 October 20, 1998, the applicant pled guilty in the Superior Court of California, County of Monterey, to inflicting corporal injury on a spouse or cohabitant in violation of section 273.5(a) PC, a misdemeanor. (Case No.

(2) On September 9, 2003, the applicant pled guilty in the Superior Court of California, County of Monterey, of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor. (Case Numb

(3) On September 9, 2003, the applicant pled guilty in the Superior Court of California, County of Monterey, of driving without a license in violation of section 12500(a) VC, a misdemeanor. (Case Number

On appeal, the applicant complains of the unfairness of roadside sobriety tests and "old machines that are not accurate and reliable for testing human beings" and contends that the convictions in Nos. (2) and (3) above arose out of the same arrest and not a "string of law violations."

The applicant's assertion that the misdemeanor convictions in Nos. (2) and (3) above arose in a single occasion and, therefore, he was convicted of a single misdemeanor offense, cannot be accepted. The fact that the charges arose from a single arrest does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled guilty to two separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the convictions in Nos. (2) and (3) above represent convictions of two separate and distinct offenses.

The applicant is ineligible for TPS due to his record of three 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.

It is noted that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal on August 5, 1999. His application was rejected on September 21, 1999, because he did not file his application within one year of his last arrival in the United States, and he failed to establish that there were changed circumstances that materially affected his eligibility for asylum or extraordinary circumstances relating to a delay in filing.

On September 20, 1999, the supervisory asylum officer, San Francisco, California issued a Form I-862, Notice to Appear, ordering the applicant to appear at the District Office in San Francisco, California, on October 27, 1999, for a removal hearing. On October 11, 2002, the Immigration Judge administratively closed the proceeding because the applicant produced evidence that he had filed an application for TPS.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of two misdemeanors and that he had never 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.

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.