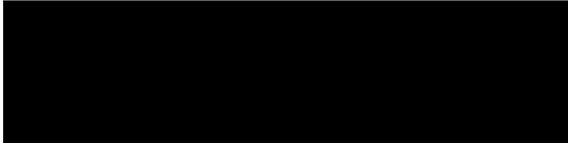




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 286 57709]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 17 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:



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

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 9, 2000, the applicant was arrested in Dallas/Ft. Worth, Texas, and charged with driving while intoxicated. On January 9, 2001, the applicant was convicted of driving while intoxicated, a Class B misdemeanor, in the County Criminal Court of Dallas County, Texas. (Case No. [REDACTED]) The applicant provided a separate court document from Dallas County criminal court discharging the applicant from community supervision because he had complied with the items and conditions and costs assessed and completed the community supervision ordered as of January 9, 2003.
2. On May 12, 2002, the applicant was arrested in Arlington, Texas, and charged with driving while intoxicated. On July 10, 2002, the applicant pled guilty to this charge in the County Criminal Court No. 3 of Tarrant County, Texas. (Case No. [REDACTED])

On appeal, the applicant states that he has complied with all court requirements relating to his two convictions and asks that he be granted TPS. He submits copies of the court disposition documents previously submitted in response to the Notice of Intent to Deny dated April 22, 2004.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). In this case, the applicant has not provided a court document establishing that his conviction was vacated based on the merits of the case. He has only provided a document indicating that he had been released from community supervision because he had complied with the terms of the supervision.

The applicant's statements are acknowledged. However, the fact remains that the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). There is no waiver available for this ground of ineligibility. Consequently, the director's decision to deny the application for this reason will be affirmed.

It is noted that the applicant previously applied for asylum and for withholding of removal on September 23, 1992. His application was denied by the Asylum Office in Anaheim, California, on January 6, 1994, and the applicant was referred for a removal hearing before an Immigration Judge. On October 13, 1993, the Immigration Judge ordered the applicant deported to El Salvador in absentia. On September 11, 1999, the applicant filed a motion to reopen and reconsider the decision of the Immigration Judge because he asserted that he fell within one of the six classes of aliens described in section 203 of Nicaraguan and Central American Relief Act (NACARA). On March 20, 2000, the Immigration Judge denied the motion to reopen. The record contains a Warrant of Deportation dated October 24, 1995, that remains outstanding.

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.

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U.S. Citizenship
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M 1



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 18 2005**
[EAC 04 029 52164]
[EAC 04 195 51662 – APPEAL]

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

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Robert P. Wiemann, Director
Administrative Appeals Office