



U.S. Citizenship
and Immigration
Services



MI

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: [REDACTED]
[WAC 01 203 53496]

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".

for 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 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 originally denied the application on March 1, 2004, because the applicant had been convicted of four misdemeanors. The applicant filed an appeal on April 7, 2004. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal on April 27, 2004, and stated that the appeal would not be treated as a motion since it did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3). The applicant filed a motion to reopen on May 11, 2004. The director dismissed the motion on June 4, 2004, because the motion did not state reasons for reconsideration supported by pertinent precedent decisions, and to establish that the decision was incorrect based on the evidence of record.

On appeal, the applicant asserts that he has been convicted of only two misdemeanors. He submits court documents previously furnished and contained in the record of proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

The record reveals the following offenses:

- (1) On December 16, 1991, in the Municipal Court of Southeast, South Gate Judicial, County of Los Angeles, California, [REDACTED] (arrest date December 15, 1991), the applicant, under the name of [REDACTED] was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b), a misdemeanor; Count 3, hit and run/property damage, 20002(a) VC, a misdemeanor; and Count 4, driving with suspended license, 14601.1(a) VC, a misdemeanor. On April 7, 1992, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 3 years, ordered to spend 2 days in the county jail, and pay \$1,053 in fines and costs as to Count 2. He was placed on probation for a period of one year, and ordered to pay \$540 in fines and costs as to Count 3. Counts 1 and 4 were dismissed.
- (2) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 20, 1991, in Norwalk, California, the applicant was arrested for petty theft. The FBI report shows that the applicant was subsequently convicted of this offense; however, the actual, final court disposition is not contained in the record.

- (3) The FBI report shows that on March 23, 1992, in Norwalk, California, the applicant was arrested for petty theft. The final court disposition of this arrest is not contained in the record.
- (4) On February 21, 1995, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 19, 1995), the applicant was indicted for Count 1, battery, 242 PC, a misdemeanor; and Count 2, willful cruelty to child, 273(a)(b) PC, a misdemeanor. On May 16, 1995, the applicant was granted diversion in accordance with 1000 PC, as to Count 1. Count 2 was dismissed. On December 19, 1995, diversion was terminated and Count 1 was dismissed by the court. Diversion in California, pursuant to section 1000 PC, is not a conviction for immigration purposes.
- (5) On July 7, 1996, in the Municipal Court of Southeast, South Gate Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 17, 1996), the applicant was convicted of dumping or littering, 374.3 PC. He was ordered to pay \$81 in fines and costs. Although the court record shows that the applicant was charged with a misdemeanor, California Penal Code 374.3 states that any person violating this section is guilty of an infraction punishable by a mandatory fine of not less than \$100 nor more than \$1000. Because this offense is not punishable by imprisonment, it is not considered a misdemeanor for immigration purposes.
- (6) On December 1, 2000, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 4, 2000), the applicant, under the name of [REDACTED] was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b), a misdemeanor. On December 11, 2000, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years; ordered to pay \$1,199 in fines, costs, and restitution; enroll and successfully complete a 3-month first-offender alcohol and drug education and counseling program; and driving was restricted for 90 days. Count 1 was dismissed.
- (7) On January 22, 2001, in the Municipal Court of Southeast, H.P. Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 17, 2000), the applicant was indicted for Count 1, "STOPLAMPS-EVRY VEH EQUIP 1/MOR," 24603(a) VC, an infraction; Count 2, driving with suspended or revoked license, 14601.5(a) VC, a misdemeanor; and Count 3, no proof of car insurance, 16028(a) VC, an infraction. On March 15, 2001, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 3 years, and ordered to pay \$956 in fines and costs as to Count 2. He was ordered to pay \$270 in fines and costs as to Count 3. Count 1 was dismissed.

Despite the applicant's assertions on appeal, the record shows that the applicant was convicted of at least four misdemeanors.

Therefore, the applicant is ineligible for TPS due to his record of at least four misdemeanor convictions detailed in Nos. 1, 6, and 7 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 for this reason 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.