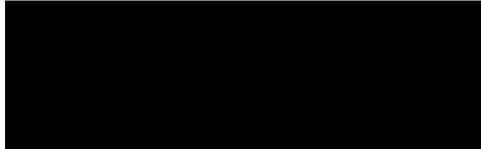


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FILE:



Office: VERMONT SERVICE CENTER

Date:

**SEP 06 2006**

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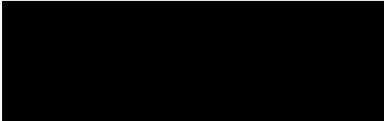
Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 determined that the applicant failed to “submit official dispositions for an arrest that you had on March 11, 2000, for Driving While Intoxicated (1192.2 and 1192.3).”

On appeal, counsel argues that the applicant “is prima facie eligible for TPS.” Counsel also provides a certified copy of the transcript of a record on file in The District Court of the County of Suffolk, New York of the dispositions of the applicant’s arrest.

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.  
8 C.F.R. § 244.1.

The disposition provided on appeal of the applicant’s arrest on March 11, 2000, shows the following:

**ARRAIGNMENT OFFENSES:**

VTL 1192.3 - OPERATING MV UNDER INFLUENCE DRUG OR ALCOHOL  
VTL 1192.2 - OPERATING MV UNDER INFLUENCE DRUG OR ALCOHOL  
VTL 1128.A- FAILURE TO STAY IN SINGLE LANE  
VTL1229C.3-OPERATING VEHICLES WITH SAFETY SEATS/BELTS

VTL 509.1- OPERATIONG MV BY UNLICENSED DRIVER  
VTS 1163-IMPROPER TURN AND FAILURE TO SIGNAL

DATE OF PLEA: 06/14/2000

DATE OF DISPOSITION: 06/14/2000

DISPOSITIONS

VTL 1192.3 - DISM  
VTL 1192.2 - REDUCED TO VTL 1192.1  
VTL 1128.A- DISM  
VTL1229C.3- DISM  
VTL 509.1- PG, FINE=\$50  
VTL 1163- DISM  
VTL1192.1- PG, FINE=\$500, LS=90D

New York VTL 509 states that a violation of any provision of this section (this includes VTL 509.1) “shall be punishable by a fine of not less than fifty nor more than two hundred dollars, or by **imprisonment for not more than fifteen days**, or by both such fine and imprisonment...” Likewise, BTL 1193.1 states that driving while ability impaired (VTL 1192.1) shall be a traffic infraction and “shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by **imprisonment in a penitentiary or county jail for not more than fifteen days**, or by both such fine and imprisonment.” (Emphasis added.)

Consequently, for immigration purposes, VTL 509.1, and VTL 1192.1 are misdemeanors as defined in 8 C.F.R. § 244.1. The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two or more misdemeanor convictions committed in the United States. There is no waiver available to an alien found inadmissible under this section pursuant to 8 C.F.R. § 244.3(c)(1). Consequently, the application is denied for this reason.

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.