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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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DEC 03 2007

FILE:

[REDACTED]  
[EAC 01 217 51034]

OFFICE: Vermont Service Center

DATE:

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.

  
for

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center (VSC), and the case is now before the Administrative Appeals Office (AAO) on appeal.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 withdrew the application because he determined that the applicant was ineligible for TPS because the applicant had been convicted of three misdemeanor offenses committed in the United States.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS.

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.  
8 C.F.R. § 244.1.

The record reveals that the applicant was arrested by the Sheriff's Office in Riverhead, New York for the following offenses:

- (1) On March 18, 1996, the applicant was arrested for DWI; and,
- (2) On March 18, 1996, the applicant was arrested for AGG UNLIC.

Pursuant to a letter dated August 27, 2003, the applicant was requested to submit the final court disposition for the charges as detailed above. In addition, if convicted, the applicant was requested to provide evidence showing whether the charge was classified as a felony or misdemeanor.

Counsel, on behalf of the applicant, responded to the director's request and submitted certified true transcripts from the District Court of Suffolk County, New York reflecting that the applicant pled guilty on October 18, 1996, to 240.20 and VTL 1192.1. In addition, counsel provided true transcripts from the District Court of Suffolk County, New York reflecting three additional offenses against the applicant of VTL 319.3, VTL 375.1, and VTL 375.40; however, these offenses were dismissed on April 27, 2001. The director determined

that the applicant was ineligible for TPS because the applicant pled guilty to and was convicted of three misdemeanor offenses committed in the United States. Therefore, the director denied the application on March 29, 2004.

On appeal, counsel, on behalf of the applicant, argues that the applicant was not convicted of any misdemeanor offenses committed in the United States. Counsel further argues that none of the applicant's convictions under New York State Law or Vehicle and Traffic Law were declared to be a misdemeanor or felony; however, are "traffic infractions." Counsel also states that "traffic infractions" are not crimes or misdemeanors under New York State Law or Vehicle and Traffic Law.

A review of the case court disposition (Number: 107876, regarding NYSID Number [REDACTED] reflects that the applicant plead guilty to and was charged with the following on August 13, 2002: (1) Operating a Motor Vehicle without a license (VTL 509.1); (2) Operating a Motor Vehicle While Under the Influence of Drug or Alcohol (VTL 1192.2); and (3) Disorderly Conduct (PL 240.20).

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..."

Disorderly conduct, 240.20 PL, is classified a "violation" by the State of New York. According to section 10.00(3) of the New York State Penal Law, "violation" means an offense that can carry a possible sentence of imprisonment for up to fifteen days. Consequently, for immigration purposes, these offenses are considered "misdemeanors" as defined by 8 C.F.R. § 244.1.

The applicant is not eligible for temporary protected status because he has been convicted of three misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to withdraw the application for TPS on this ground is 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.