

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 244A 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 felony or misdemeanor.

*Prima facie* means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if un rebutted will establish a claim of eligibility under section 244A(c) of the Act.

*Register* means to properly file, with the district director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244A(b) of the Act.

*State* means any foreign country or part thereof as designated by the Attorney General pursuant to section 244A(b) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991]

#### § 240.2 Eligibility.

Except as provided in §§ 240.3 and 240.4, an alien may in the discretion of the district director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a state designated under section 244A(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 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 § 240.3;

(e) Is not ineligible under § 240.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period; or

(2) Is or was in valid immigrant or nonimmigrant status during the registration period, and registers no later than 30 days from the expiration of such status during any subsequent period of redesignation, or by February 3, 1994, whichever date is later.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

#### § 240.3 Applicability of grounds of inadmissibility.

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (4), (5) (A) and (B), and (7)(A)(i) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

(c) *Grounds of inadmissibility that may not be waived.* The Service may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);

(2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or

(3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

[56 FR 619, Jan. 7, 1991, as amended at 58 FR 58937, Nov. 5, 1993]

#### § 240.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien: