

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).

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§ 240.4 Ineligible aliens.

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

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(a) Has been convicted of any felony or two or more misdemeanors, as defined in §240.1, committed in the United States, or

(b) Is an alien described in section 243(h)(2) of the Act.

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§240.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by the Attorney General, a national of a state designated by the Attorney General shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244A of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by the Attorney General. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under §240.13. The denial of temporary treatment benefits prior to the registration period designated by the Attorney General shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under §240.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

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

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§240.6 Application.

An application for Temporary Protected Status shall be made in accordance with §103.2 of this chapter except as provided herein. Each application must be filed with the fee as provided in §103.7 of this chapter, by each individual seeking Temporary Protected Status, except that the fee for Form I-765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization. Each application must consist of a completed Application for Temporary Protected Status (Form I-821), Application for Employment Authorization (Form I-765), two completed fingerprint cards (Form FD-258) for every applicant who is fourteen years of age or older, two identification photographs (1½"×1½"), and supporting evidence as provided in §240.9.

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

§240.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the district director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General, except in the case of an alien described in §240.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in §240.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the district director under §240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under §240.3(c) or 240.4. Eligibility for Temporary Protected Status in the latter instance shall be