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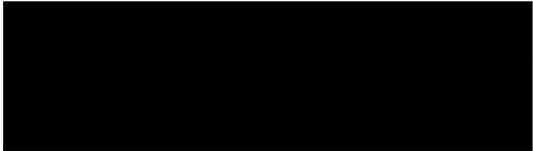
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2004

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.

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 Honduras 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 was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that his only conviction was on February 2, 1996, and that he, therefore, is eligible for TPS. He added that he no longer drinks alcoholic beverages.

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 section 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The record reflects the following:

1. On April 19, 1993, in the Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District, Case No. [REDACTED] the applicant was indicted for Count 1, driving while under the influence of alcohol, in violation of 23152(a) VC, a misdemeanor; and Count 2, driving with a blood alcohol level of .08 percent or more, in violation of 23152(b) VC, a misdemeanor. On June 10, 1993, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, ordered to spend 48 hours in the county jail, and assessed a total of \$567 in fines and costs. Count 1 was dismissed.
2. On December 26, 1995, in the Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District, Case No. [REDACTED] the applicant was indicted for Count 1, driving while under the influence of alcohol, in violation of 23152(a) VC, a misdemeanor; and Count 2, driving with a blood alcohol level of .08 percent or more, in violation of 23152(b) VC, a misdemeanor. On February 27, 1996, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to spend 5 days in the county jail, and assessed a total of \$1,214 in fines and costs. Count 1 was dismissed.

On appeal, the applicant submits a California Department of Motor Vehicles (DMV) Form K-4 printout dated December 20, 2000. The applicant points out that this printout listed only the conviction detailed in No. 2 above, and asserts that this DMV printout proved that he had been convicted of just one misdemeanor. However, since minor offenses on Form K-4 are purged from the computer listing (but not vacated or overturned) every three years, and since major offenses remain on the list for five or seven years, it is not surprising that the conviction in No. 1 above, which occurred over seven years before this list was printed, was not included on the Form K-4

printout. In response to the director's June 8, 1999, request for evidence, the applicant provided court records confirming the two misdemeanor convictions detailed above.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.