



U.S. Citizenship  
and Immigration  
Services

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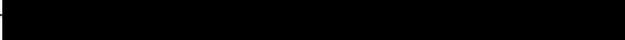
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OCT 29 2004

FILE:  Office: CALIFORNIA SERVICE CENTER Date:

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

On appeal, the applicant asserts that he should not be denied TPS because his conviction was reduced from a felony to a misdemeanor; therefore, he is still entitled to benefits under the TPS provisions of the law. He indicates that he is sending a brief and/or evidence within 30 days. To date, the file contains no further response from the applicant. Therefore, the record is considered complete.

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 September 17, 1998, in Southeast Municipal Court, South Gate, California, the applicant was convicted of 23152(a) VC, "driving under the influence of alcohol/drugs," a misdemeanor. He was placed on probation for a period of 3 years, served 2 days in the county jail, and fined \$946.
2. On November 19, 1998, in Los Angeles, California, the applicant was arrested and charged with Count 1, "211 PC (2<sup>nd</sup> degree robbery) with allegation 12022.7(a) PC (personally inflicted great bodily injury)," a felony; and Count 2, "203 PC (Mayhem)," a felony. On December 7, 1998, in the Superior Court of California, County of Los Angeles, the court added Count 3, 245(a) PC, "force/assault with a deadly weapon not firearm, great bodily harm likely," a felony. On January 20, 1999, the applicant entered a plea of guilty to the felony offense of 245(a) PC (Count 3). He was convicted of the crime, sentenced to 36 months of probation, and served 93 days in jail.
3. The record further reflects that on January 21, 1999, in Los Angeles, California, the applicant was convicted of 23152(a) VC, "drunk driving alcohol/drugs," a misdemeanor. The applicant was sentenced to 3 years of probation and 24 days in the county jail.

Further, the Federal Bureau of Investigation (FBI) fingerprint results report reflects the following arrests and/or convictions in Los Angeles, California. The final court dispositions of these crimes are not contained in the record of proceeding:

4. Arrested on May 6, 1998, for threatening a school public officer employee.
5. Arrested on August 7, 1998, for "battery on person."
6. Arrested on March 28, 1999, for assault with a deadly weapon-no firearms/great bodily injury.
7. Arrested on April 9, 2001, for grand theft from person.
8. Arrested on July 5, 2002, for battery, spouse/ex-spouse/date/etc.
9. Arrested on July 26, 2003, for driving under the influence of alcohol/drugs.
10. Arrested on August 8, 2003, for driving under the influence of alcohol/0.08 percent.
11. Arrested on January 13, 2004, for obstructing a public officer.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his one felony and 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 applicant asserts that his felony conviction, listed in No. 2 above, was reduced to a misdemeanor. It is noted that the FBI report shows that the January 20, 1999 felony conviction of 245(a) PC was reduced to a misdemeanor on December 4, 2002, more than 3 years later. The applicant, however, failed to submit the court disposition to establish that this felony conviction was subsequently reduced to a misdemeanor. If the reduction was a result of a rehabilitative action by the court based on the applicant's completion of his 3 years of probation, it should be noted that the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

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.