



U.S. Citizenship  
and Immigration  
Services

MM

[Redacted]

FILE:

[Redacted]

Office: PROVIDENCE

Date:

8/1/04

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The application was denied by the Officer in Charge (OIC), Providence, Rhode Island, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The OIC determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The OIC, therefore, denied the application.

On appeal, counsel asserts that the applicant had petitioned the court to have his two convictions vacated, and he is awaiting a hearing and a decision. He further asserts that if one or both convictions are vacated, the applicant will be eligible for TPS.

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.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

\* \* \*

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802).

The record reflects the following:

1. On September 2, 1992, in the District Court, State of Rhode Island, Case No. [REDACTED] the applicant was convicted of shoplifting, in violation of Rhode Island statute 11-41-20, a misdemeanor. He was ordered to pay \$50 plus costs.

2. On August 2, 1994, in the District Court, State of Rhode Island, Case No. [REDACTED] the applicant was convicted of possession of marijuana, in violation of Rhode Island statute 21-28-4.01(C)(1)(B), a misdemeanor. He was placed on probation for a period of one year and ordered to pay \$200 in fines and costs.

3. The Federal Bureau of Investigation report reflects that on January 18, 2001, in Roseville, California, the applicant was arrested and charged with trespassing-occupied property without consent. The records of Placer County Superior Court, California (Case No. [REDACTED] furnished by the applicant, shows that the case was dismissed on March 18, 2003.

Subsequent to the appeal, counsel submits an order of the Superior Court, State of Rhode Island, dated June 27, 2003, granting the applicant's Post Conviction Relief application. The court found that the terms and conditions of the applicant's sentence had been completed and granted the applicant's motion to expunge Case No. [REDACTED] (paragraph 2 above).

Despite the expungement of the applicant's conviction of possession of marijuana, 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 applicant, therefore, remains convicted of paragraph 2 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. Furthermore, the applicant's conviction of possession of marijuana renders him inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act. There is no waiver available to an alien found inadmissible under this section. Nor is there a waiver available for convictions 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.