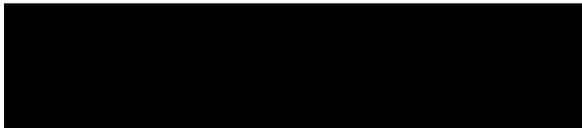


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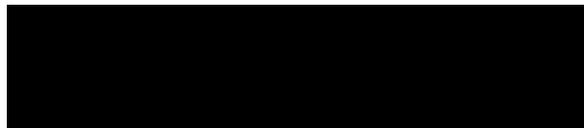
OFFICE: CALIFORNIA SERVICE CENTER

DATE DEC 28 2005

[WAC 01 168 52049]

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 claims to be 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 denied the application because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant asserts that one of the misdemeanor offenses does not relate to him. He also requests that he be granted an additional six months in which to submit a brief and/or evidence because he is currently requesting the courts to review and dismiss his cases. To date, however, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

The record reveals the following offenses:

- (1) On September 16, 2001, in Los Angeles, California, Case No. [REDACTED] the applicant was arrested for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 3, hit and run/property damage, 20002(a) VC, a misdemeanor; Count 4, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 5, no proof of car insurance, 16028(a) VC, an infraction. On September 18, 2001, in the Superior Court of California, County of Los Angeles, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 36 months under the condition that he serve 96 hours in the county jail, ordered to pay \$1,410 in fines and costs, enroll and successfully complete a 3-month first-offender alcohol and other drug education and counseling program, and driving privilege was suspended for a period of 6 months as to Count 2. He was placed on probation for a period of 36 months, and ordered to pay \$811 in fines and costs as to Count 3. Counts 1, 4, and 5 were dismissed. The record shows that the applicant violated the terms of his probation and on September 27, 2002, he was committed to 30 days in jail under "reference case: [REDACTED] No. 2 below).
- (2) On March 14, 2002, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date December 19, 2001), the applicant was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was ordered to pay \$316 in fines and costs.
- (3) The Federal Bureau of Investigation fingerprint results report shows that on September 27, 2002, the applicant was arrested for driving with .08 percent blood alcohol level or more, 23152(b) VC. This arrest relates to No. 1 above.

On appeal, the applicant states that the director's Notice of Decision dated June 2, 2002, indicated that he was convicted on February 24, 2001 [of section 20002(a) of the Vehicle Code-Hit and Run/Property Damage, a misdemeanor]; however, this conviction does not relate to him.

The record of proceeding contains no evidence that the applicant was convicted on February 24, 2001, of the offense listed by the director in his decision. However, the record does indicate that the applicant was convicted of a similar offense (section 20002(a) VC) on September 18, 2001 (Count 3 of No. 1 above).

Additionally, the applicant, on appeal, asserts that he believes he was misrepresented in court regarding the two other misdemeanor convictions, and that he is currently requesting the courts to review and dismiss these cases. While he requested an additional six months in which to complete the court proceedings, no additional evidence has been provided. Furthermore, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999)

The applicant is ineligible for TPS due to his three misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). It is also noted that although the translator certified that the [English] "translation is accurate," it was not translated in its entirety as required by 8 C.F.R. § 103.2(b)(3); rather, it only contains a certificate number, the applicant's name, the date of birth, the place of birth, the name of father, and the name of mother. Therefore, the application will also be denied for this reason.

An alien applying for temporary protected status has the burden of proving that he or she 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.

**ORDER:** The appeal is dismissed.