



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2005
[WAC 01 197 54413]

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 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 submits a statement. While 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 shall be 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 June 30, 1994, in the Municipal Court of East Los Angeles Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 20, 1994), the applicant was indicted 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; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On July 22, 1996, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 17 days in the county jail, 90-days driving restriction, pay the total of \$258 in fines and costs, and participate and successfully complete a 3-month alcohol and drug education and counseling program. Counts 1 and 3 were dismissed.
2. On July 18, 1996, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 17, 1996), the applicant was indicted 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; and Count 3, driving with suspended or revoked license, 14601.5(a) VC, a misdemeanor. On July 18, 1996, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 13 days in the county jail, pay the total of \$1,332 in fines and costs, and participate and successfully complete a 3-month alcohol and drug education and counseling program. Counts 1 and 3 were dismissed. Because the applicant violated the terms of his probation, on August 21, 2000, his probation

was revoked and he was ordered to serve 178 days in the county jail, sentence to run consecutive to sentence imposed in Case No. [REDACTED] (No. 3 below).

3. On July 31, 2000, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 28, 2000), the applicant was indicted 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, driving with suspended license, 14601.2(a), a misdemeanor; Count 4, driving with suspended or revoked license, 14601.5(a), a misdemeanor; and Count 5, unlicensed driver, 12500(a) VC, a misdemeanor. On August 21, 2000, the applicant was convicted of Counts 2 and 4. He was placed on probation for a period of 60 days, ordered to pay \$600 in fines and costs, and serve 120 days in the county jail to run consecutive to Case No. [REDACTED] No. 2 above), as to Count 2. He was placed on probation for a period of 36 months, and serve 10 days in the county jail in lieu of fine, to run consecutive to all other jail sentences, as to Count 4. Counts 1, 3, and 5 were dismissed.

The applicant, on appeal, asserts that he has completed all the court requirements and his case was terminated. He further asserts that his convictions are traffic violations and are not criminal.

The court records relating to the applicant's convictions, however, show that the applicant was convicted of **misdemeanor** offenses, whether or not they are traffic offenses. Furthermore, no evidence was furnished to establish that the cases were terminated or dismissed. Even if the applicant's convictions were, in fact, dismissed, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held 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.

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

It is noted in the record that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on August 26, 1993, in Los Angeles, California, based on the applicant's entry into the United States without inspection on August 30, 1989.

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.