



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 08 2005

[WAC 01 264 58154]

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

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 requests reconsideration because he is about to complete his probation and he has been a good person for almost three years.

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 ...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(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 reveals the following:

1. On August 7, 1991, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 13, 1991), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, use/under influence of a controlled substance, 11550 H&S, a misdemeanor; and Count 3, driving with suspended license, 14601.1(a) VC, a misdemeanor. On August 7, 1991, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, ordered to spend 48 hours in the county jail, and pay the total of \$1,015.50 in fines and costs. Counts 2 and 3 were dismissed.

2. On September 4, 1997, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 11, 1997), the applicant, in a 5-count indictment, was convicted of Count 5, unlicensed driver, 12500(a) VC, a misdemeanor. He was sentenced to serve one day in the county jail, and ordered to pay restitution fine in the amount of \$100. Counts 1, 2, 3, and 4 were dismissed.

3. On April 30, 2001, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (date April 28, 2001), 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) VC, a misdemeanor; and Count 4, possession of marijuana under 1 oz, 11357(b) H&S, a misdemeanor. On April 30, 2001, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 36 months, ordered to spend 96 hours in the county jail, and pay the total of \$1,154 in fines and costs as to Count 2. He was placed on probation for a period of 36 months, ordered to spend 10 days in the county jail, and pay the total of \$811 in fines and costs as to Count 3. Counts 1 and 4 were dismissed.

The California Department of Motor Vehicles, Form H6, contained in the record, reveals the following:

4. On January 26, 1988, Docket No. [REDACTED] the applicant was convicted of driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor (arrest date November 22, 1987). He was placed on probation for a period of one year.

5. On April 23, 1993, Docket No. [REDACTED] the applicant was convicted of driving while license suspended or revoked, 14601.1 VC, a misdemeanor (arrest date February 9, 1993). He was placed on probation for a period of 36 months, and ordered to serve time in jail.

6. On April 23, 1993, Docket No. [REDACTED] the applicant was convicted of driving under the influence, 23152(a) VC, a misdemeanor (arrest date February 9, 1993). He was placed on probation for a period of 5 years, and ordered to serve time in jail.

The Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record, reveals the following:

7. On April 16, 1998, in Los Angeles, California, the applicant was arrested for the felony offense of inflicting corporal injury to spouse/cohabitant, 273.5(a) PC. The court's final disposition of this arrest is not included in the record.

8. On May 20, 1990, in Los Angeles, California, the applicant was arrested for the felony offense of assault with firearm on a person, 245(a)(2) PC. The court's final disposition of this arrest is not included in the record.

9. On February 9, 1993, in Los Angeles, California, the applicant was arrested for the misdemeanor offense of carrying a concealed weapon in a vehicle. The court's final disposition of this arrest is not included in the record.

10. On March 5, 1995, in Los Angeles, California, the applicant was arrested for the felony offense of selling/furnishing marijuana/hashish. The court's final disposition of this arrest is not included in the record.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least seven misdemeanor convictions, and because he failed to submit court dispositions of all his arrests as requested on December 8, 2003. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The record shows that on November 17, 2000, an immigration judge granted the applicant voluntary departure from the United States on or before March 19, 2001, with an alternate order of removal to El Salvador if the applicant should fail to depart as required. There is no evidence in the record that the applicant departed from the United States as required.

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

ORDER: The appeal is dismissed.