

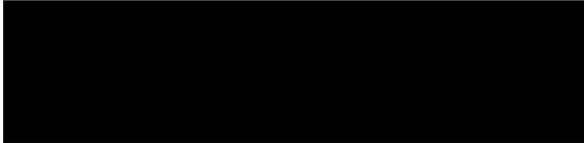
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 11 2005
[WAC 99 156 51639]

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 Honduras 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 and additional evidence.

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. The Federal Bureau of Investigation fingerprint results report shows that on November 27, 1994, the applicant was arrested for hit and run. The final disposition of this arrest is not contained in the record.
2. On May 13, 1991, in the Municipal Court of Pasadena Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 13, 1991), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On May 14, 1991, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, and ordered to pay a total of \$991 in fines and costs. Count 1 was dismissed. Because the applicant violated the terms of his probation, on June 18, 1993, the applicant was sentenced to serve 90 days in the county jail.
3. On December 14, 1990, in the Municipal Court of Pasadena Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 16, 1990), the applicant was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was ordered to pay a fine in the amount of \$50.
4. On November 28, 1990, in the Municipal Court of Pasadena Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date October 18, 1990), the applicant was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was sentenced to serve 3 days in jail, and ordered to pay a fine in the amount of \$118.
5. On July 30, 1990, in the Municipal Court of Pasadena Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 16, 1990), the applicant was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was placed on probation and ordered to pay a total

of \$236 in fines and costs. On April 5, 1993, a bench warrant was issued for the applicant's arrest and the applicant was subsequently sentenced to serve 90 days in the county jail.

The applicant, on appeal, states that he procured the services of an attorney to expunge his criminal records since they occurred 10 years ago and are traffic violations. He requests reconsideration because all the cases were terminated and he complied with all the court orders.

Even if the applicant's conviction were to be expunged or 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. Furthermore, a time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

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 that the record of proceeding contains Form I-205, Warrant of Removal/Deportation, issued on July 13, 1999, in Los Angeles, California, based on the final order of removal issued by an immigration judge on May 4, 1999.

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.