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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 15 2005
[WAC 99 198 52566]

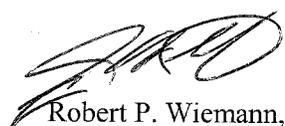
IN RE: Applicant: [REDACTED]

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

On appeal, the applicant asserts that he is in the process of having his 1998 convictions expunged. While the applicant indicates that he needs 90 days in which to submit a brief and/or evidence, 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 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On June 23, 1998, in the San Diego Municipal Court, County of San Diego, San Diego Judicial District, California, Case No. [REDACTED] the applicant was convicted of driving under the influence, 23152(a) VC, a misdemeanor. He was sentenced to serve 180 days in jail, placed on probation for a period of 5 years, and fined \$1100.
- (2) On June 23, 1998, in the San Diego Municipal Court, County of San Diego, San Diego Judicial District, California, Case No. [REDACTED] the applicant was convicted of disturbing the peace, 415(3) PC, a misdemeanor. He was placed on probation for a period of 3 years and fined \$300.

The Federal Bureau of Investigation (FBI) fingerprint results report, and the records of the Department of Homeland Security (DHS) database, the National Crime Information Center (NCIC) report, and the County of San Diego Criminal History Summary report, contained in the record of proceeding, reflect the following offenses:

- (3) The FBI report shows that on December 11, 1994, in Idaho Falls, Idaho, the applicant was arrested for Count 1, driving under the influence; and Count 2, injury to a child.
- (4) The DHS database shows that on June 19, 1998, in San Diego, California, the applicant (name used: [REDACTED]) was arrested for disorderly conduct-prostitution, 647(b) PC, a misdemeanor.

- (5) The NCIC report shows that the applicant (name used: [REDACTED]) was charged in San Diego, California: (i) on April 11, 1997, with driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; (ii) on June 23, 1998, with driving under the influence, 23152(a) VC, a misdemeanor; and (iii) June 23, 1998, with disorderly conduct-prostitution, 647(b) PC, a misdemeanor.
- (6) The County of San Diego Criminal History and California DMV report show that the applicant was charged: (i) on June 19, 1998, with disorderly conduct-prostitution, 647(b) PC, a misdemeanor (name used: [REDACTED]); (ii) on September 7, 1996, with driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor, and 12500(a) VC (name used: [REDACTED]); (iii) on June 28, 1996, with driving under the influence, 23152(a), VC, a misdemeanor (name used: [REDACTED]) and (iv) on January 22, 1994, with driving under the influence, 23152(a), VC, a misdemeanor (name used: [REDACTED]).

The record of proceeding does not contain the final court dispositions of the charges listed in Nos. 3, 4, 5, and 6 above. Furthermore, there is no evidence in the record to suggest that the charges listed in Nos. 4, 5, and 6 are related to each case, and also to No. 2 above.

On appeal, the applicant asserts that he is in the process of having his 1998 convictions expunged.

The record does not contain evidence that the applicant's convictions were expunged or dismissed. However, even if the applicant's convictions were 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. Therefore, even if the convictions in Nos. 1 and 2 were expunged, for immigration purposes, the applicant would remain convicted of the two misdemeanors listed in Nos. 1 and 2 above.

The applicant is ineligible for TPS due to his record of at least two misdemeanors, 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 for this reason will be affirmed.

The record shows that on December 15, 1998, the Immigration Judge (IJ) denied the applicant's application for cancellation of removal and granted the applicant voluntary departure until February 16, 1999, upon posting of a bond. On January 8, 1999, the applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On June 29, 1999, the BIA dismissed the appeal.

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.