

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 02 2005
[WAC 02 172 52764]

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

On appeal, counsel submits a statement.

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 July 11, 1995, in the Municipal Court of the City and County of San Francisco, California, 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), a misdemeanor; Count 3, hit and run driving causing property damage, 20002(a), a misdemeanor; and Count 4, reckless driving, 23103 VC, a misdemeanor. On March 12, 1996, the applicant was convicted of Count 4 (Case No. [REDACTED]). He was placed on probation for a period of 36 months, ordered to spend 2 days in the county jail, and pay \$675 in fines and costs. Counts 1, 2, and 3 were dismissed.
- (2) The Federal Bureau of Investigation fingerprint results report shows that on June 12, 1995, in San Francisco, California, the applicant was arrested for hit and run causing property damage. There is no evidence in the record to indicate that this arrest is related to the case detailed in No. 1 above.
- (3) The Criminal History Record of the San Francisco Police Department (SFPD) indicates that the applicant was arrested on September 1, 1998, for Count 1, failure to stop at red signal, 21453(a) VC, an infraction; Count 2, no seat belt, 27315(d) VC, an infraction; Count 3, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 4, driving with .08 percent blood alcohol level or more, 23152(b), a misdemeanor. The SFPD record shows that the applicant was convicted of Count 3. However, the applicant failed to submit the actual court disposition of this arrest although the applicant was requested on March 1, 2003, to submit the final dispositions of any violations and/or arrests from the court where the hearing took place, "not from the police station."

On appeal, counsel asserts that the applicant has been twice convicted of misdemeanor traffic violations, but that one conviction was set aside by the Superior Court of California for San Francisco County. He further asserts that expungements of convictions cited in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), and *Lujan-Almendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), involved drug offenses and crimes of moral turpitude, and are

distinguishable from the applicant's convictions of traffic violations; therefore, the [REDACTED] need not be applied in the case of traffic offenses. Counsel submits an order of the court dated March 22, 2002, dismissing the applicant's conviction of reckless driving (No. 1 above) pursuant to 1203.4 PC.

Despite counsel's assertions, 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, supra*. Therefore, the applicant remains convicted, for immigration purposes, of the misdemeanor offense listed in No. 1 above.

The applicant has failed to provide the final court disposition of his arrests detailed in Nos. 2 and 3 above. Therefore, he is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The record contains a Warrant of Deportation, Form I-205, issued in San Francisco, California, on October 11, 1993, based on the final order of removal by an immigration judge on October 10, 1992.

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.