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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 03 2006

[WAC 05 062 72663]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed a TPS application on January 28, 1999, under receipt number WAC 99 103 52379. On June 8, 1999, the applicant was requested to submit evidence regarding previous arrests and court dispositions. On June 22, 1999, the applicant provided court dispositions establishing that he was convicted of two misdemeanors. On December 4, 2000, the director denied the application because he found the applicant ineligible for TPS based on his two misdemeanor convictions.

On January 3, 2001, the applicant filed an appeal of the director's decision to the AAO. On December 16, 2004, the AAO affirmed the director's decision and dismissed his appeal, finding the applicant was ineligible for TPS based on his two misdemeanor convictions.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 1, 2004, and indicated that he was re-registering for TPS.

On July 23, 2005, the director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On August 18, 2005, the applicant filed his appeal with the AAO, stating that since he received a work permit, he had been granted TPS. However, the applicant received a work permit, while his TPS application was pending.

Additionally, the applicant submits documents demonstrating that his two misdemeanor convictions were set aside and vacated by a judge in the Superior Court of California, County of Alameda, on September 2, 2005. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions, which 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*, 22 I&N Dec. 512 (BIA 1999). The Order for Release from Penalties and Dismissal does not state that the applicant's two misdemeanor convictions were vacated on the merits. Therefore, the applicant remains convicted of these two misdemeanors for immigration purposes.

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 June 10, 1993, the applicant was convicted of having 0.08 percent or more, by weight, of alcohol in his blood, while driving a vehicle, in violation of California Vehicle Code § 23152(b), a misdemeanor
- (2) On February 27, 1996, the applicant was convicted of having 0.08 percent or more, by weight, of alcohol in his blood, while driving a vehicle, in violation of California Vehicle Code § 23152(b), a misdemeanor

On appeal, the applicant states that since his two misdemeanor convictions were vacated, he is eligible for TPS. However, since the convictions were not vacated on the merits, the applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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.