



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 23 2007
[WAC 02 088 54325]
[WAC 06 264 53382, *motion*]

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:



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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed.

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).

The applicant claims to be a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 11, 2002.

The director subsequently withdrew the applicant's TPS on October 8, 2005, when it was determined that the applicant had been convicted of two or more misdemeanors or a felony.

The AAO reviewed the record of proceeding and noted that on January 12, 2005, in the Superior Court of California, County of Riverside, Case No. [REDACTED], the applicant entered a plea of guilty to Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. The AAO, therefore, determined that the applicant was ineligible for TPS due to his two misdemeanor convictions, concurred with the director's decision to withdraw the application, and dismissed the appeal on August 1, 2006.

On motion, counsel asserts that the applicant's TPS was incorrectly withdrawn. He further asserts that the applicant pled guilty to both counts PC 23152(a) and (b) although "each count arose out of the same facts and occurrence. It has been widely held, under Penal Code 654, that a conviction under any provision bars a prosecution for the same act under any other provision. As both charges in this case arise under the driving while under the influence act taking place on November of 2004, the CIS errs in finding that this is two separate convictions."

A further review of the record and as previously noted, the records of the Superior Court of California under Case No. [REDACTED] indicates that the applicant entered a plea of guilty to Count 1, driving under the influence, 23152(a) VC, and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC. As to both Counts 1 and 2, the applicant was placed on probation for a period of 36 months under the condition that he serve 26 days; pay \$20 for Court Security Surcharge, \$110 for booking fee, \$100 for restitution fine; to attend and complete 1st offender DUI program; and his license was restricted for 3 months. As to Count 1, the applicant was ordered to pay \$1391.40 in fines and assessment.

Counsel's assertions on appeal are not persuasive. That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. According to the court disposition, the applicant was charged with two separate offenses or counts, he pled guilty to two separate offenses, and the court issued two separate sentences. Further, it is noted that the court indicted the applicant on Counts 1 and 2, the applicant entered a plea of guilty as to both Counts 1 and 2, and that during the sentencing of the applicant the court neither cited, addressed, referenced, nor introduced Penal Code 654; rather, the court chose to sentence the applicant with two separate sentences. Therefore, the applicant had been convicted of two separate and distinct misdemeanor offenses.

The applicant remains ineligible for TPS based on his convictions of two misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the motion will be dismissed, and the previous decision of the AAO dated August 1, 2006, will be affirmed.

Additionally, the AAO, in its decision dated August 1, 2006, noted that the record did not contain evidence to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). The AAO further noted that the Federal Bureau of Investigation fingerprint results report indicated that the applicant was born in Mexico and that he is a citizen of the United States, and that this claim of United States citizenship may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(ii) of the Act. On motion, the applicant submitted a copy of an El Salvadoran passport issued on January 25, 2002, in Los Angeles, California. However, the applicant neither addressed nor submitted any evidence that he was not inadmissible pursuant to section 212(a)(6)(ii) of the Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion is dismissed. The decision of the AAO dated August 1, 2006, is affirmed.