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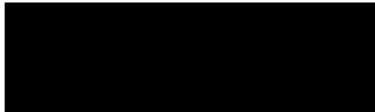
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OFFICE: VERMONT SERVICE CENTER

DATE: AUG 24 2007

IN RE:

Applicant:



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:** 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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 applicant filed his TPS application on December 4, 2006.

The director denied the application on March 22, 2007, because the applicant has been convicted of two misdemeanor offenses.

Counsel asserts the applicant's claim of eligibility for TPS. On August 14, 2007, the AAO received counsel's request to withdraw the appeal to pursue the same relief and seek TPS during his removal proceeding hearing before the immigration judge.

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.

Under section 101(a)(48) of the Act:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
  - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
  - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record reveals the following offenses:

- On February 16, 2003, in the city of Las Vegas, Nevada, the applicant pled guilty to one count of driving under the influence, a misdemeanor. (Case number [REDACTED] A).
- On July 31, 1997, in the city of Las Vegas, Nevada, the applicant was found guilty of petit larceny, a misdemeanor. (Case number [REDACTED])

On appeal, counsel states that vacated convictions are not convictions for immigration purposes, submits copies of the final court dispositions in the applicant's criminal cases, and requests that the appeal be withdrawn as the applicant is now considered convicted of only one misdemeanor.

The record of proceeding reveals that the applicant has been convicted of two misdemeanor offenses committed in the United States. Although the Nevada court decided to continue the applicant's case for possible dismissal upon completion of the terms of probation, 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*, I.D. 3377 (BIA 1999). There has been no evidence presented to demonstrate that either of the applicant's two misdemeanor convictions, as defined in 8 C.F.R. § 244.1, was vacated on the merits. An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of two misdemeanor offenses, and therefore, is ineligible for TPS.

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.

**ORDER:** The appeal is dismissed based upon counsel's request to withdraw.