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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 224 70888]

Office: CALIFORNIA SERVICE CENTER

JAN 25 2007
Date:

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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 165 51300. The record revealed the following offenses:

1. On October 7, 1999, the applicant was arrested in Norwalk, California, and charged with: (1) one count of false statement to the Division of Motor Vehicles/California Highway Patrol in violation of section 20 VC, a misdemeanor, and (2) one count of forging an official seal in violation of section 472 PC, a misdemeanor. On October 27, 1999, the applicant pled “nolo contendere” to both counts in the Municipal Court of Los Angeles Cerritos Judicial District, County of Los Angeles, State of California. (Case No. [REDACTED])
2. On April 28, 2002, the applicant was arrested in Norwalk, California, and charged with: (1) one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; (2) one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor; and, (3) one count of driving without a valid driver’s license in violation of section 12500(a) VC, a misdemeanor. On September 17, 2002, the applicant pled “nolo contendere” to count (2) in the Municipal Court of Compton Judicial District, County of Los Angeles, State of California. Counts (1) and (3) were dismissed in the furtherance of justice pursuant to section 1385 PC. (Case No. [REDACTED])
3. On May 12, 2002, the applicant was arrested in Los Angeles, California, and charged with: (1) one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor, and (2) one count of driving without a valid driver’s license in violation of section 12500(a) VC, a misdemeanor. On May 13 2002, the court amended the complaint by interlineation to add count (3), reckless driving in violation of section 23103 VC, a misdemeanor. The applicant pled “nolo contendere” to count (3), and counts (1) and (2) were dismissed in the furtherance of justice pursuant to section 1385 PC. (Case No. [REDACTED])
4. On September 17, 2002, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol. The applicant has not provided the final court disposition of this arrest.

The director denied that application on August 19, 2003, because he found the applicant had been convicted of four misdemeanors. After a review of the record, the Chief, AAO, concurs with the director's denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, and indicated that he was re-registering for TPS.

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.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

Beyond the decision of the director, the applicant is statutorily ineligible for TPS due to his record of four misdemeanor convictions. **Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).** On appeal, the applicant provides orders from the Superior Court of California, County of Los Angeles, expunging the convictions detailed in Nos. (2) and (3) above pursuant to section 1203.4 PC. 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*, 22 I&N Dec. 512, (BIA 1999). The applicant has not provided any proof to establish that the convictions detailed in Nos. (2) and (3) above were expunged based on the merits of the case. Rather, the court orders specifically state that the convictions were being expunged because the applicant had fulfilled the conditions of his probation. Therefore, the applicant's convictions on the offenses detailed in Nos. (2) and (3) above are considered convictions for immigration purposes. There is no waiver of this ground of ineligibility.

Furthermore, the applicant has also failed to provide the final court disposition of the arrest detailed in No. 3 above. The applicant is also 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). Therefore, the application also must be denied for this reason. Any further TPS applications filed by the applicant will also be denied for these same reasons

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.