

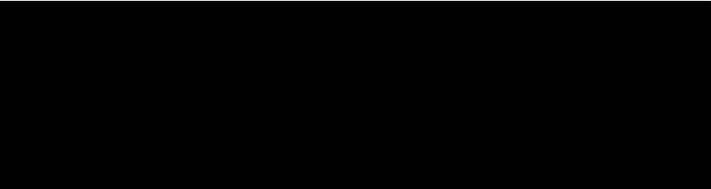


U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: JUL 30 2007

[WAC 06 122 70069]

IN RE:

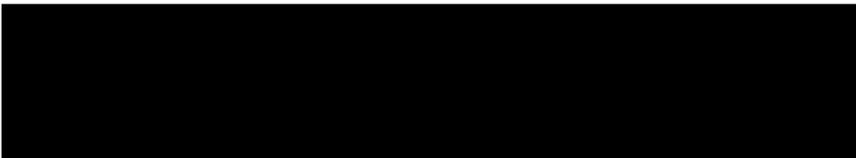
Applicant:



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:

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 black ink, appearing to read "R. Wiemann".

for 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 late initial TPS application on January 30, 2006, under CIS receipt number WAC 06 122 70069. The director denied the application on September 14, 2006, because the applicant failed to establish eligibility for late initial registration for TPS.

On appeal, counsel reasserts the applicant's eligibility for TPS, and states that the applicant is eligible for late initial registration because he is the spouse of a TPS registrant.

On appeal, counsel correctly stated that the applicant was eligible to file a late initial application for TPS as he has been married, and remains married, to the spouse of a TPS registrant. The applicant, however, remains ineligible for TPS due to his record of at least two misdemeanor convictions, detailed below. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.
8 C.F.R. § 244.1.

The record of proceedings contains final court dispositions which reveal the following:

- 1) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on guilty a plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail.
- 2) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on guilty pleas (Case No. [REDACTED] of: 1) one count of violating Section "PC 484-488." The applicant was sentenced to 75 days jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]; and, 2) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 3) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on a guilty plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 4) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on guilty pleas (Case No. [REDACTED] of: 1) one count of violating Section "PC 484-488." The applicant was sentenced to 75 days jail (to be served concurrently with the sentence imposed in Case No. [REDACTED] and, 2) one count of violating Section "PC 602(N)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 5) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on a guilty plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 6) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on a guilty plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 7) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on a guilty plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]
- 8) On March 5, 1990, the Municipal Court of California, Santa Clara County Judicial District, convicted the applicant, on a guilty plea (Case No. [REDACTED] of: 1) one count of violating Section "PC 647(F)." The applicant was sentenced to 75 days in jail (to be served concurrently with the sentence imposed in Case No. [REDACTED]

It is also noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his TPS application, also reveals that:-

- 1) On August 7, 1998, the applicant was arrested by the Police Department, San Jose, California, and charged with, Charge 1: "M ASLT & BATT; Charge 2: "M UND INFL/ALCO/DRUGS/CONTR SUB"; and,
- 2) On February 23, 2000, the applicant was arrested by the Corrections Department, San Jose, California, and charged with, Charge 1: 1 Count OF DRIVING W/A 0.08 OR HIGHER".

The AAO notes that the final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests and any convictions in any future proceedings.

On appeal, counsel asserts that the applicant's charges have been expunged. Counsel does not, however, provide final court dispositions for these charges. Furthermore, for immigration purposes, a conviction is still a conviction. 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). Therefore, the applicant remains convicted of this offense for immigration purposes.

The record confirms that the applicant has been convicted of two or more misdemeanors. Consequently, the director's decision to deny the application must 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.