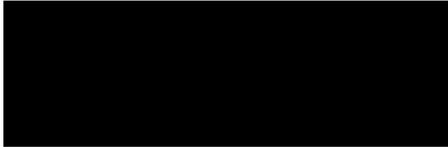


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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **OCT 17 2007**
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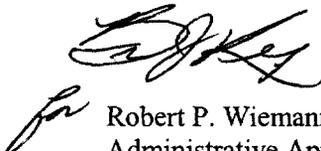
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had been convicted of two misdemeanor offenses committed in the United States.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

On August 25, 2004, the Secretary of the Department of Homeland Security announced the termination of prior designations and the re-designation of TPS for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia). This re-designation allowed nationals of Liberia who have continuously resided in the United States since October 1, 2002, and who have been continuously physically present since August 25, 2004, to apply for TPS. The initial registration period for this new re-designation began on August 25, 2004, and ended on February 21, 2005. The re-designation of Liberia's TPS eligibility became effective on October 1, 2004, and subsequent extensions of the TPS designation have been granted until October 1, 2007.

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. 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

1. On December 18, 1998, in the Superior Court of County of Fulton, Georgia, Case No. [REDACTED] (arrest date March 29, 1998), the applicant (name used: [REDACTED]) and a co-defendant were indicted for Count 1, aggravated assault, a felony; Count 2, cruelty to children in the first degree, a felony; and Count 3, reckless conduct, a misdemeanor. On February 23, 1999, the applicant entered a plea of guilty to Count 3. The court withheld adjudication of guilt, and the applicant received first offender treatment and was placed on probation for a period of 12 months, ordered to pay \$500 in fines and costs, and to complete 80 hours of community service. Counts 1 and 2 were dismissed. Having fulfilled the terms of probation, on July 25, 2006, the court ordered the applicant discharged and exonerated of the criminal conviction.

2. On November 23, 2002, in Gwinnett County, Georgia, the applicant was arrested and charged with (1) failure to obey traffic control device, Georgia Code § 40-6-20(a), an infraction, under Citation No. [REDACTED]; (2) no proof of insurance, Georgia Code § 40-6-10(a)(1), a misdemeanor, under Citation No. [REDACTED] and (3) must have license in possession, Georgia Code § 40-5-29(a), under Citation Number [REDACTED]. On February 12, 2003, the applicant entered a plea of guilty to all three offenses, and he was sentenced to credit for time served as to each offense.

On appeal, the applicant states that the misdemeanor charge for which he pled guilty (No. 1 above) was negotiated and he was given First Offender Treatment under Georgia's First Offender Act, and that he was discharged of the offense without court adjudication of guilt. He further states that the 9th Circuit Court, in *Lujan-Almendariz v. INS*, 222 f.3d 728 (9th Cir. 2000), held that the new definition of "conviction" for immigration purposes [section 101(a)(48)(A) of the Act] did not repeal either the Federal First Offender Act or the rule that no alien may be deported based on an offense that could have been tried under the Act, but is instead prosecuted under state law, where the findings are expunged pursuant to a state rehabilitative statute. The applicant asserts that Part 4(d) of the TPS application (Form I-821) specifically states "excluding traffic violations," and that his convictions of no proof of insurance and disobeying a traffic device, are traffic violations (No. 2 above).

As claimed by the applicant, "disobeying a traffic device" is a violation; however, no "proof of insurance" is punishable by imprisonment for more than 5 days; therefore, this offense is a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1. It is also noted that the director, in her notice of intent to deny dated January 19, 2006, requested that the applicant submit final court dispositions of all of his arrests, and that if he were convicted of any charge, he must also provide evidence showing whether the charge for which he was convicted was classified as a felony or misdemeanor. The applicant was convicted of "no license in possession" (No. 2 above); however, it is not clear in the record whether the applicant was convicted of a misdemeanor or an infraction, nor did the applicant submit the classification for this offense from the court. While the applicant claims on appeal that he presented his license to the court, the court document failed to support this claim.

Additionally, as cited in *Lujan-Almendariz*, the First Offender Act allows persons who have never previously violated the narcotics law and are found guilty of first time simple drug possession to have the charges dismissed without entry of a conviction, provided that the judge deems them suitable for such treatment. *Lujan-Almendariz* also held that "aliens who commit first time simple drug possession offenses that are expunged are not subject to removal on account of those offenses, but all others "convicted" of drug or other offenses covered by the immigration laws, are."

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(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, in this case, shows that the applicant entered a plea of guilty to reckless conduct, and that the judge ordered some form of punishment or penalty (12 months of probation, fines and costs, and community service). Therefore, the applicant had been convicted within the meaning of section 101(a)(48)(A) of the Act. Additionally, the definition of conviction applies to all crimes except simple possession of a controlled substance where the proceedings were dismissed or deferred under the Federal First Offender Act or an equivalent state statute. While the record, in this case, indicates that the applicant's charge (No. 1 above) was dismissed pursuant to Georgia First Offender Treatment, the charge was not related to a simple possession of a controlled substance but, rather, he was charged with a non-drug crime (reckless conduct); therefore, the state rehabilitative action is not parallel to the Federal First Offender Act and are ineffective for immigration purposes. Accordingly, the applicant remains convicted of the offense of reckless conduct despite the dismissal or expungement of the conviction. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the TPS application will be affirmed.

It is noted on the Federal Bureau of Investigation fingerprint results report that the applicant had indicated that he is a citizen of the United States. Falsely claiming United States citizenship may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.

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.