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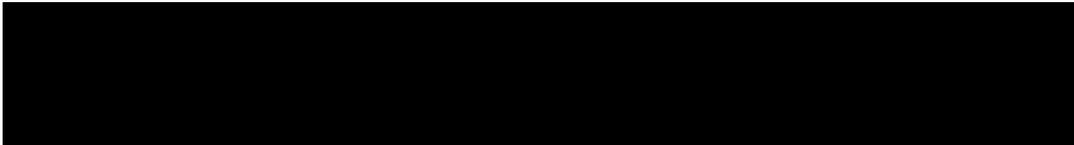
IN RE:

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS). The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because he found the applicant was ineligible for TPS because he had been convicted of at least two misdemeanors.

On appeal, the applicant states that one of his convictions is for an invalid license and that he received only a fine. The applicant further states that his court appointed attorney advised him that the conviction would have no effect on his immigration status.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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).

The regulation at 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.

The record reveals the following offenses:

1. On May 26, 2004, the applicant was convicted in the Harris County (Texas) Criminal Court of assault causing bodily injury, a class A misdemeanor. He was sentenced to ten days in the Harris County Jail. Case number [REDACTED]

2. On March 7, 2006, the applicant was convicted in the Harris County Criminal Court of driving with a suspended license, a class B misdemeanor. He was sentenced to three days in the Harris County Jail and fined \$100. Case number [REDACTED]

On appeal, the applicant states that his conviction for item 2 above was for a traffic offense, which, according to his court appointed lawyer, was a petty offense.

The regulation at 8 C.F.R. § 244.1 provides that an offense is not considered a misdemeanor if it is punishable by imprisonment for a maximum term of five days or less. The applicant was sentenced to three days in jail. However, accordingly to section 521.457 of the Texas Transportation Code, driving with an invalid (suspended) license is punishable by confinement in the county jail for not less than 72 hours and not more than six months. Accordingly, the offense is considered a misdemeanor for immigration purposes.

The applicant asserts that his plea of guilty and his subsequent conviction for driving with a suspended license were based on incorrect information from his attorney regarding its affect on his immigration status. However, the applicant submitted no corroborating evidence to support his assertion and no evidence that his conviction has been set aside.

The applicant is therefore ineligible for TPS due to his conviction of two misdemeanors, as detailed 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 application for this reason will 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.