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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 17 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 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 director denied the application because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, counsel submits a statement and additional evidence.

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.

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 March 23, 1990, in the Municipal Court of Alhambra Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 18, 1990), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On April 18, 1990, the applicant was convicted of Count 1. He was placed on probation for a period of 3 years on the condition that he perform 15 days of community service, participate in a program of treatment or counseling, and his driving was restricted for 90 days. Count 2 was dismissed. Because the applicant violated the terms of his probation, on July 27, 1990, the applicant was ordered to serve 5 days in the county jail, concurrent with Case No. [REDACTED] and that all other terms and conditions of probation to remain the same. The court record regarding Case No. [REDACTED] is not contained in the record of proceeding.
- (2) On March 15, 1991, in the Municipal Court of Rio Hondo, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 25, 1990), the applicant was indicted for Count 1, hit and run driving causing property damage, 2002(a) VC, a misdemeanor; Count 2, driving with suspended license, 14601.2(a) VC, a misdemeanor; Count 3, no proof of car insurance, [REDACTED], an infraction; and Count 4, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor. On April 29, 1991, the applicant was convicted of Counts 1, 2, and 4. Count 3 was dismissed. The applicant was placed on probation for a period of 3 years, ordered to pay a fine of \$191, complete 150 hours of community service, attend and complete drug and alcohol school, and his driver's license was restricted as to Counts 1 and 4. The applicant was ordered to complete 100 hours of community serve and sentenced to 15 days "Caltrans" as to Count 2.

- (3) The Federal Bureau of Investigation (FBI) report shows that on January 18, 1992, in El Monte, California, the applicant was arrested for robbery. The court's final disposition of this arrest is not contained in the record although the applicant was requested on May 24, 2003, to submit the final dispositions of all arrests.
- (4) On January 30, 1998, in the Municipal Court of Citrus Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 14, 1997), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 3, driving with suspended license, 14601.2(a) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a) VC, an infraction. On April 1, 1998, the applicant was convicted of Count 1, and he admitted the prior convictions of violation of 23152(a) VC as to Count 1, on April 29, 1991, under Case No. [REDACTED] (No. 2 above), and on January 31, 1997, under Case No. [REDACTED]. He was also convicted of Counts 3, and 4. Count 2 was dismissed. As to Counts 1 and 3, the applicant was placed on probation for a period of 5 years under the condition that he serve 180 days in the county jail, pay \$1,963 in fines and costs, participate in an 18-month program of treatment or counseling, and his driving privilege was revoked. As to Count 4, the applicant was ordered to pay \$500 in fines or spend 16 days in the county jail. The court record regarding Case No. [REDACTED] is not contained in the record of proceeding.
- (5) The FBI report shows that on August 15, 1999, in Monrovia, California, the applicant was arrested for driving under the influence of alcohol/drugs. The court's final disposition of this arrest is not contained in the record although the applicant was requested on May 24, 2003, to submit the final dispositions of all arrests.

On appeal, counsel asserts that the applicant is in the process of having his misdemeanor convictions expunged. He submits copies of receipts from the court to show that petitions for expungements were filed on August 12, 2003, to expunge Case No. [REDACTED] (No. 1 above), Case No. [REDACTED] (No. 2 above), and Case No. 8JM01362 (No. 4 above).

Even if the applicant's convictions were to be dismissed, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

The applicant is ineligible for TPS due to his record of at least 7 misdemeanor convictions and because he failed to provide the final court dispositions of his arrests detailed in Nos. 1, 3, 4, and 5 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 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.