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

M1

[REDACTED]

FILE: [REDACTED]
[EAC 01 202 51837]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 26 2008

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:

[REDACTED]

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".

Robert P. Wiemann, Director
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 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 misdemeanor offenses 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On May 10, 1994, in the District Court of Maryland, the applicant entered a plea of guilty to “DR. WHILE INTOX., UNDER THE INFLU. OF ALCOHOL & DRUGS, DRUGS & ALCOHOL & CONTROLLED DANG. SUBSTANCE,” Maryland Vehicle Code TA 21-902. He was placed on “probation before judgement” and ordered to pay \$550 in fines and costs (arrest date November 26, 1993).
- (2) On May 10, 1994, in the District Court of Maryland, the applicant entered a plea of guilty to “DR. WHILE INTOX., UNDER THE INFLU. OF ALCOHOL & DRUGS, DRUGS & ALCOHOL & CONTROLLED DANG. SUBSTANCE,” TA 21-902. He was ordered confined, placed on probation, and fined \$500 (arrest date December 19, 1993).
- (3) On January 10, 1994, in the District Court of Maryland, the applicant was convicted of driving without a license, TA 16-101. He was fined \$85 (arrest date October 28, 1993).
- (4) On January 10, 1994, in the District Court of Maryland, the applicant was convicted of vehicle driver giving false and fictitious name, TA 16-112. He was ordered to pay \$100 in fines and costs (arrest date October 28, 1993).

- (5) On March 6, 1995, in the District Court of Maryland, the applicant was convicted of driving without a license, TA 16-101. He was ordered to pay \$55 in fines and costs (arrest date November 30, 1994).
- (6) On December 9, 1997, in the District Court of Maryland, the applicant was convicted of unauthorized display and use of registration plate, TS 13-703. He was ordered to pay \$200 in fines and costs (arrest date February 6, 1997).
- (7) The Federal Bureau of Investigation fingerprint results report shows that the applicant, under the name of [REDACTED] was arrested on September 17, 1995, in Rockville, Maryland, and charged with assault and battery. The court's final disposition of this arrest is not contained in the record.
- (8) The FBI report shows that the applicant, under the name of Jose Hernandez, was arrested on June 4, 2002, in Rockville, Maryland, and charged with battery. The record of proceeding contains the record of the District Court of Maryland, Montgomery County, Case No, [REDACTED] indicating that this case was heard of July 11, 2002, and that the court entered a [REDACTED] to the charges of (1) battery and (2) "ALC BEV OPEN CONT RETL EST."

On appeal, counsel states that the applicant was convicted of violating the traffic laws of the State of Maryland, specifically, driving under the influence, that the applicant was granted probation before judgment, and that he has successfully completed his period of probation. Counsel asserts that the definition of a criminal offense in the State of Maryland, pursuant to Maryland Rule 4-102(g), is a violation of the criminal laws of the State; therefore, the application should not be denied because he violated the traffic laws of the State of Maryland.

Counsel's assertions are not persuasive. Pursuant to Maryland Criminal and Motor Vehicle Laws § 27-101, it is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law unless the violation is declared to be a felony or is punishable by a civil penalty. Furthermore, 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.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The applicant entered a plea of guilty to the charges detailed in No. 1 above, and the judge ordered some form of punishment (\$550 in fines and costs). The applicant, therefore, had been convicted within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his record of at least six misdemeanor convictions, 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 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.