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

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FILE:

[WAC 05 221 82717]
[LIN 05 009 50501]

OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 06 2007

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial TPS application was approved by the Director, Nebraska Service Center. A subsequent application for re-registration 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 TPS application subsequent to the initial registration period under CIS receipt number LIN 05 009 50501. The application was approved on January 12, 2005. In conjunction with the applicant's subsequent re-registration application, the Director, California Service Center, requested the applicant submit final court dispositions stemming from his arrests in 2000 and 2005, which were indicated in the Federal Bureau of Investigation fingerprint record report. The Director subsequently dismissed the re-registration applicant and withdrew the approval of the TPS application on March 20, 2006, after determining that the applicant had been convicted of two misdemeanor offenses.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

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 reveals the following offenses:

- On November 7, 2000, the applicant was found guilty by the Lower Kittitas County District Court, State of Washington, of driving under the influence of alcohol or drugs (DUI), a misdemeanor, and he was sentenced to a period of probation.

- On April 21, 2005, the applicant was before the Chelan County District Court, State of Washington, where he entered into a deferred prosecution agreement stemming from his arrest and charge with driving under the influence of alcohol or drugs (DUI) on February 19, 2005.

On appeal, counsel states that the applicant is eligible for TPS in that he has only been convicted of one misdemeanor, and that the 2005 DUI offense is not a conviction within the meaning of the Immigration and Nationality Act. To substantiate his claim, counsel submits copies of the court dispositions.

Contrary to counsel's assertions, the record of proceedings reveals that the applicant has been convicted of at least two misdemeanor offenses in the United States. The record shows that the applicant entered into a deferred prosecution agreement as to the 2005 DUI offense, and was sentenced to a period of supervised probation where he agreed to pay court ordered fines and agreed to enter into and complete supervised treatment plans. The applicant "stipulated to the admissibility and sufficiency of the facts contained in the written police report." The applicant's liberty was restrained in that he was placed on probation or court supervision to enter and complete programs as directed by the probation department, and agreed to pay court ordered fines. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law.

State rehabilitative actions that 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*, I.D. 3377 (BIA 1999). Furthermore, the driving under the influence charge carried a maximum sentence of 365 days and/or a \$5,000.00 fine. Hence, it is considered by the AAO as a misdemeanor offense as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of at least two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of at least two misdemeanor offenses. Consequently, the director's decision to deny the re-registration application and withdraw the approval of the initial TPS 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.