



U.S. Citizenship
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JUN 06 2005

FILE: [REDACTED]
[WAC 01 287 57185]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

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. The application 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 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 he found the applicant had been convicted of two or more misdemeanors.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 February 10, 1991, the applicant was arrested in Los Angeles, California, and charged with buying or selling an article with the identification removed in violation of section 537(e) PC, a misdemeanor. (Case [REDACTED] On March 12, 1991, the complaint was amended in the Municipal Court of Compton Judicial District, County of Los Angeles, State of California, to add an additional charge, driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor, as count two. The applicant was convicted of Count two, driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. Count one was dismissed.
- (2) On October 7, 1992, the applicant was arrested in Los Angeles, California, and charged with one count of taking a vehicle without the owner's consent in violation of section 10851(a) VC, a misdemeanor. (Case [REDACTED] On December 13, 1992, the case was amended in the Municipal Court of Southeast - Huntington Park

Judicial District, County of Los Angeles, State of California, to add one count of taking a vehicle for temporary use in violation of section 499(b) PC, a misdemeanor. Count one, taking a vehicle without the owner's consent in violation of section 10851(a) VC, was dismissed in the furtherance of justice. The applicant was convicted of count two, taking a vehicle for temporary use in violation of section 499(b) PC.

- (3) On July 27, 1995, the applicant was arrested in Los Angeles, California, and charged with taking a vehicle without the owner's consent in violation of section 10851(a) VC, a felony; one count of receiving or concealing stolen property in violation of section 496(a) PC, a felony; and, one count of possession or manufacturing of identification with intent to defraud in violation of section 10752 VC, a felony. (Case # [REDACTED] On September 13, 1995, the charges were dismissed in the Municipal Court of Compton Judicial District, County of Los Angeles, State of California, on the motion of the defense because of insufficient evidence.

On appeal, counsel asserts that the applicant has not been convicted of two or more crimes involving moral turpitude. Counsel contends that the applicant's conviction on the charge of driving without a license in violation of section 12500(a) was "strictly a regulatory offense" and did not constitute a conviction of a crime involving moral turpitude. Counsel submits copies of the same court documents previously submitted in response to the director's request for evidence dated November 6, 2003.

The record clearly establishes that the applicant has been convicted of two misdemeanor offenses. While counsel asserts that the applicant's conviction of driving without a valid driver's license in violation of section 12500(a) VC was "strictly a regulatory offense," the fact remains that this conviction is a misdemeanor conviction. Counsel's assertion that this conviction does not represent a crime involving moral turpitude is irrelevant. Pursuant to section 244(c)(2)(B)(i) of the Act, 8 C.F.R. § 244.4(a), an alien is ineligible for TPS if he or she has been convicted of one felony or two or more misdemeanors. There is no indication in the statute or the regulation that an alien is ineligible for TPS only if one or both of his misdemeanor convictions meets the definition of a crime involving moral turpitude set forth at section 212(a)(2)(A)(i)(I) of the Act.

It is noted that the applicant's conviction on the charge of taking a vehicle for temporary use in violation of section 499(a) PC was dismissed in the Municipal Court of Huntington Park, County of Los Angeles, State of California, on March 16, 1998, because more than one year had elapsed since the date of pronouncement of judgment, and the applicant had complied with the sentence of the court and was not serving a sentence for any other offense or charged with the commission of any other crime. On April 3, 1998, the applicant's conviction on the charge of driving without a valid driver's license in violation of section 12500(a) VC was dismissed for the same reason. However, 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*, 22 I&N Dec. 512, (BIA 1999).

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the record reveals that the applicant, under penalty of perjury, fraudulently indicated on Part 4, Line 2.a., and d., of his application for TPS that he had not been convicted of two misdemeanors and that he had never been arrested. This misrepresentation of a material fact in an application for immigration benefits would also render the applicant inadmissible under section 212(a)(6)(C) of the Act.

It is noted for the record that the applicant filed a Form I-589, Request for Asylum in the United States, on May 3, 1988. His application was denied on November 17, 1997, and he was referred for a deportation hearing before an Immigration Judge. The applicant filed Form EOIR-43B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Aliens, on March 6, 1998.

On August 17, 1998, the Immigration Judge in Los Angeles, California, denied the application for cancellation of removal and adjustment of status and granted the applicant the privilege of voluntary departure until October 16, 1998, with an alternate order of deportation if the applicant failed to depart in compliance with the grant of voluntary departure. The Immigration Judge also ordered the applicant to post a \$500 bond within five days of her order.

On September 17, 1998, the applicant filed an appeal from the order of the Immigration Judge with the Board of Immigration Appeals (BIA). The BIA dismissed the applicant's appeal on June 26, 2001, and granted him the privilege of voluntary departure within 30 days of the date of the decision, with an alternate order of deportation if the applicant failed to depart as ordered. Finally, it is noted that the applicant's bond is currently pending with the District Office, Los Angeles.

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.