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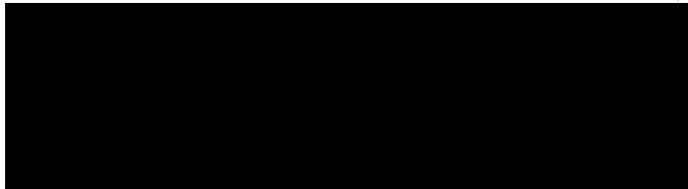
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OFFICE: CALIFORNIA SERVICE CENTER

DATE: SEP 30 2005

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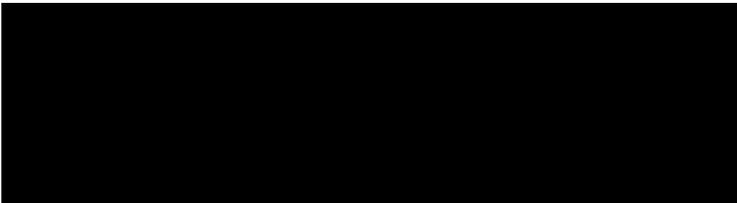
Applicant:



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.

for 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 asserts that the applicant's four misdemeanor offenses occurred prior to the enactment of section 244(c)(2)(B) of the Act and, thus, cannot be applied retroactively.

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.

The record reveals the following offenses:

- (1) On January 9, 1991, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date December 22, 1990), the applicant, under the name of [REDACTED] was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On January 28, 1991, the complaint was amended by interlineations to add, as Count 3, reckless driving/no injury, 23103 VC, a misdemeanor. On January 28, 1991, the applicant was convicted of Count 3. He was placed on probation for a period of 36 months, and ordered to pay \$594 in fines and costs. Counts 1 and 2 were dismissed.
- (2) On August 14, 1995, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 13, 1995), the applicant, under the name of [REDACTED] was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On August 14, 1995, the applicant was convicted of Count 2. He was placed on probation for a period of 60 months under the condition that he serve 144 hours in the county jail, and ordered to pay \$1,296 in fines, costs, and restitution. Counts 1 and 3 were dismissed.
- (3) On December 12, 1996, in the Municipal Court of Compton Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 24, 1996), the applicant, under the name of [REDACTED] was indicted for Count 1, failure to stop at line/stop sign, 22450 VC, an infraction; Count 2, driving with suspended license, 14601.2(a) VC, a misdemeanor; and Count 3, driver/passenger unrestrained, 27315(d)(2) VC, an infraction. On October 8, 1999, the applicant was convicted of Count 2. He was placed on probation for a period of 24 months under the condition that he serve 10 days in the county jail, and ordered to pay \$100 in restitution fine. Counts 1 and 3 were dismissed.

- (4) On September 21, 1999, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date June 30, 1999), the applicant, under the name of [REDACTED], was indicted for Count 1, driving with suspended license, 14601.2(a) VC, a misdemeanor; Count 2, driving with suspended-revoked license, 14601.5(a) VC, a misdemeanor; Count 3, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a) VC, an infraction. On October 6, 1999, the applicant was convicted of Counts 2 and 4. He was placed on probation for a period of 36 months, and ordered to pay \$1,523 in fines, costs, and restitution. Counts 1 and 3 were dismissed.

Counsel's assertion that the applicant's four misdemeanor offenses cannot be applied retroactively is without merit. An appeal must be decided according to the law as it exists on the date it is before the appellate body. See *Matter of Patel*, 19 I&N Dec. 774, 779 (BIA 1998) (citing *Bradley v. Richmond School Board*, 416 U.S. 696, 710-1 (1974)). In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

Additionally, a time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

The applicant is ineligible for TPS due to his 4 misdemeanor convictions, detailed in Nos. 1, 2, 3, and 4 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.

The record shows that a Warrant of Removal/Deportation, Form I-205, was issued in Los Angeles, California, on April 23, 2004, based on the final order of removal by an immigration judge. On June 8, 2004, the applicant (under the name of [REDACTED]) was removed from the United States.

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.