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U.S. Citizenship
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FILE:



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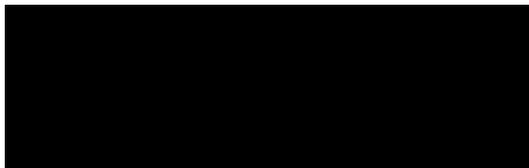
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OFFICE: CALIFORNIA SERVICE CENTER

DATE: SEP 26 2006

IN RE:

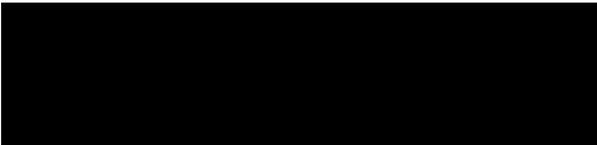
Applicant:



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.


for Robert P. Wiemann, Chief
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 originally denied the application on March 2, 2004, after determining that the applicant had abandoned his application by failing to respond to a request for evidence on January 15, 2004. On March 29, 2004, counsel filed a motion to reopen the applicant's case. She stated that the applicant did respond to the request. A review of the record shows that the applicant's response was received at the California Service Center on January 20, 2004, prior to the director's decision. The director subsequently reopened the case on motion, and the applicant was requested on July 23, 2004, to submit the final court disposition of his arrest of March 5, 2004. On October 12, 2004, the director denied the application after determining that the applicant was convicted of two misdemeanors committed in the United States.

On appeal, counsel asserts that the applicant was convicted of only one misdemeanor because the other alleged misdemeanor cited by the director was a civil traffic citation. She submits copies of the Arizona Revised Statute (ARS) to support her assertion.

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:

- (1) On February 10, 2004, in the Tucson City Court, Arizona, Docket No. [REDACTED] the applicant (name used: [REDACTED] in a five-count indictment, was convicted of Count 3, no proof of insurance (no evidence of financial responsibility), [REDACTED] a civil traffic violation; and Count 4, driving under the influence, [REDACTED] a class 1 misdemeanor. He was placed on probation for a period of 12 months, ordered to serve 40 days in jail, and pay \$288 in fines and costs. Counts 1, 2, and 5 were dismissed. According [REDACTED] a person who violates this section is subject to a "civil penalty of two hundred fifty dollars for the first violation and may direct the department to suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months." Because the applicant's conviction of ARS 28-4135 (Count 3) was not punishable by imprisonment, for immigration purposes, this violation is not a misdemeanor as defined in 8 C.F.R. § 244.1.
- (2) The Federal Bureau of Investigation fingerprint results report indicates that on March 5, 2004, in Tucson, Arizona, the applicant (name used: [REDACTED] was arrested for "DUI-LIQUOR/DRUGS/VAPORS/COMBO." The final court disposition of this arrest is not contained in the record.

- (3) Submitted as an attachment to the applicant's TPS re-registration application is a copy of a "Case Detail" purportedly obtained from the website of the Arizona Supreme Court indicating that on May 28, 2002, in South Tucson Municipal Court, Arizona, Case No. [REDACTED] the applicant was indicted for Count 1, DUI, alcohol drugs toxic vapor or combination; Count 2, "DUI W/BAC OF .08 OR MORE;" Count 3, "EXTREME DUI-0.15;" Count 4, no valid license; Count 5, stop sign violation; Count 6, "LIQ-MNR USE WTRCRFT AFTER DRINK;" Count 7, liquor-to minor by licensee/underage consumption; and Count 8, "LIQ IN VEH PASSENGER POSSESS." The record indicates that that on July 16, 2002, the applicant "PLEA-GUILTY/RESP CODE 11 & 12." It also indicates that the "Disposition" as to Counts 4 and 5 on December 16, 2004, was "FTA CIVIL; LICENSE SUSPENDED," and the "Disposition" as to Counts 1, 2, 3, 6, 7, and 8 was "COMPL DISMISSED BY COURT." It is noted that failure to appear (FTA) is a misdemeanor pursuant to ARS §13-2506 (Counts 4 and 5). Further, while the report indicates that the applicant entered a plea of guilty to [some or all of] the offenses on July 16, 2002, the court dismissed six offenses, approximately two years later, on December 16, 2004. 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. However, it is noted that this document appears to have been obtained from a computer website and was not certified by the court; therefore, it cannot be accepted as a certified copy from the court.

The applicant has failed to provide the final court disposition of his arrest detailed in No. 2 above, and the certified copy of the actual final court disposition of his arrest detailed in No. 3 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The record shows that on December 5, 2001, in Tucson, Arizona, an Immigration Judge administratively closed removal proceedings.

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.