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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 28 2008

[EAC 08 141 53882, *appeal*]

[EAC 07 188 70116]

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

John F. Grissom, Acting Chief  
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 failed to submit court dispositions for all of his two arrests committed in the United States including two arrests for driving under the influence.

On appeal, counsel states:

The decision dated March 21, 2008 states that [REDACTED] has two DUIs. You state that one of the DUIs occurred on June 25, 1995. Attached please find certified copy of the June 25, 1995 ticket. That citation number is [REDACTED]. The box for DUI is checked. I have also attached a certified copy of a court order vacating the judgment that was entered on the DUI. The case number on the court order is [REDACTED] and that is the same as the citation number that is on the ticket.

Based on the attached certified document [REDACTED] does not have two DUI convictions and therefore is eligible for "temporary protected status".

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

*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 reflects the following offenses:

- (1) The applicant’s Federal Bureau of Investigation (FBI), fingerprint results report shows that on June 25, 1995, the applicant was arrested by the Gainesville Police Department and charged with driving under the influence (DUI), and that he was convicted of that charge.

- (2) The applicant's FBI fingerprint results report shows that on December 1, 1996, the applicant was arrested by the Gainesville Police Department and charged with DUI and that he was convicted of that charge. Counsel concedes that the applicant was convicted; however, the final court disposition of this arrest is not included in the record of proceedings.
- (3) On September 29, 1997, the applicant was convicted of providing a false name to a police officer and driving on a suspended license by a Judge in the Municipal Court of Gainesville, Georgia, both misdemeanors. (Docket Number: [REDACTED])

On appeal, counsel submits a certified copy of citation number [REDACTED] dated June 25, 1995 charging the applicant with driving under the influence. Counsel also submits a certified copy of a court order by a Judge of the Municipal Court of Gainesville, Georgia, dated April 3, 2008, for the applicant's case number [REDACTED] granting the applicant's motion, vacating the judgments and sentences and granting him a new trial. Counsel argues that based on the certified document, [REDACTED] does not have two DUI convictions and therefore is eligible for "temporary protected status".

Counsel acknowledges that the applicant has one conviction for DUI but argues that he does not have two driving under the influence convictions because of the April 3, 2008 court order vacating the previous judgment stemming from his June 25, 1995 arrest. However, even if the applicant's first driving under the influence conviction was dismissed, 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, even by operation of a state rehabilitative statute. Therefore, even if the conviction were expunged by the Judge vacating the previous judgment, for immigration purposes, the applicant would remain convicted of DUI based on his 1995 arrest.

Court records confirm conviction in Item # 1 above. Counsel conceded conviction in Item # 2. The applicant provided court dispositions for two misdemeanor convictions listed in Item # 3 above. Therefore, the applicant is ineligible for TPS due to his two or more misdemeanor convictions. Section 244(c)(1)(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 is 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.