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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: APR 27 2010
[WAC 06 073 70391]

IN RE: Applicant: [REDACTED]

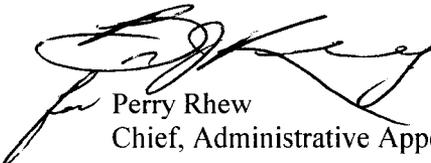
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 withdrew TPS because the applicant had failed to submit the requested court documents relating to his criminal record.

On appeal, counsel asserts that the applicant has only been convicted of one misdemeanor. Counsel submits copies of the applicant's arrest and conviction record.

The director may withdraw the status of an alien granted TPS 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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 criminal history record reflects the following offenses in the states of California and Nevada:

1. On May 27, 1995, the applicant was arrested by the Glendale Police Department for burglary.
2. On September 22, 1999, the applicant was arrested by the Los Angeles Police Department under warrant for taking a vehicle without owner consent.
3. On December 3, 1999, the applicant was detained by the Los Angeles Police Department for possession of a narcotic controlled substance. The applicant was subsequently released due to further investigation.

4. On January 31, 2008, the applicant was detained by the Los Angeles Police Department for driving under the influence. The applicant was subsequently released.
5. On December 18, 2008, by the Las Vegas Metropolitan Police for grand larceny, a felony.

On March 24, 2009, the director issued a Notice of Intent to Withdraw TPS, which requested the applicant to submit the certified final dispositions for each arrest above. The applicant, in response, submitted:

- Certified court documentation for number one, which reflects that on May 31, 1995, the applicant was charged with violating section 484 PC, theft, a misdemeanor. On June 7, 1995, the applicant pled *nolo contendere* to the offense. The applicant was placed on probation for two years, ordered to pay a fine and serve five days in jail. On June 5, 2002, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]
- A letter dated April 16, 2009, from a representative of [REDACTED] which indicated that the applicant had a case scheduled before the Las Vegas Justice Court on May 5, 2009.

The record also contains the following documents that were submitted in response to a notice issued on June 20, 2006:

- A letter dated November 14, 2005, from the Los Angeles County Superior Court, indicating that no filings were found in the jurisdiction of Downey Superior Court (cities of Downey, La Mirada, South Gate, Bell, or Bell Gardens).
- A petition request to dismiss the conviction for number one above pursuant to section 1203.4 PC.
- A Property Record relating to the applicant's arrest on December 3 1999.
- A Prisoner's Receipt relating to the applicant's arrest on September 22, 1999.

On appeal, counsel submits:

- For number two above, a certified letter dated October 7, 2009, from the Los Angeles Police Department, which indicates that the applicant was released on September 24, 1999, because prosecutor release-detention only; no case filing information found in Los Angeles County.
- For number three above, a certified letter dated October 7, 2009, from the Los Angeles Police Department, which indicated that the applicant was released on December 7, 1999, because prosecutor release-detention only; no case filing information found in Los Angeles County.

- For number four above, the applicant was released on the same day, January 31, 2008 because prosecutor release –detention only; no case filing information found in Los Angeles County.
- For number five above, certified court documentation from the Las Vegas Town Justice Court, indicating that on June 10, 2009, the complaint was amended to a misdemeanor charge of disorderly conduct. The applicant was ordered to serve 50 hours of community service, and if completed, the complaint would be dismissed. On September 15, 2009, the complaint was dismissed as the applicant successfully completed the court order. [REDACTED]

The provisions of section 1203.4 allow a criminal defendant to withdraw a plea of guilty or *nolo contendere* and enter a plea of not guilty subsequent to a successful completion of some form of rehabilitation or probation. It does not function to expunge a criminal conviction because of a procedural or constitutional defect in the underlying proceedings. 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). In this case, there is no evidence in the record to suggest that the applicant's conviction for theft was expunged because of an underlying procedural defect in the merits of the case and, thus, the vacated conviction remains valid for immigration purposes.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and the application will be approved.

The denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the applicant's initial TPS application has been approved, the denial of the re-registration application will be withdrawn and also be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.