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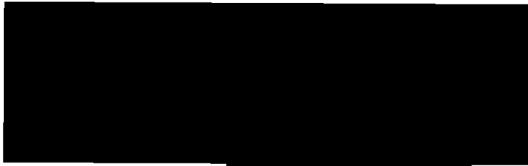
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

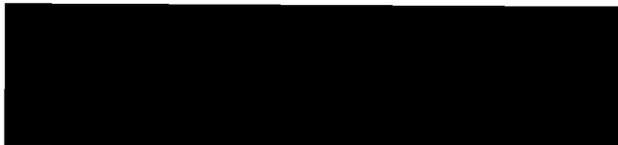
Date: MAY 06 2010

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on January 3, 2002. The Director, Texas Service Center, approved that application on February 3, 2003.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that the decision was in error because the applicant was not convicted of any of his past charges.

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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On April 20, 2003, the applicant was arrested by the Nantucket [Massachusetts] Police Department for "OUI--Liquor" and "Unlicensed Operation of MV." [REDACTED]. On May 19, 2003, the applicant entered a guilty plea or admission to sufficient facts of "OUI—Liquor," a misdemeanor, and was assigned to DUII and ordered to pay all costs/fees and his license was suspended for 45 days. The applicant complied with the terms of his probation and the charges were dismissed on May 24, 2004.
- (2) On August 16, 2004, the applicant was arrested by the Nantucket [Massachusetts] Police Department for "OUI Liquor or .08%" and "Marked Lanes Violation." [REDACTED]. On April 6, 2005, the applicant was found not guilty of these charges.
- (3) On September 22, 2004, the applicant was arrested by the Nantucket [Massachusetts] Police Department for "OP MV With License Suspended" and "Speeding." [REDACTED]. On June 6, 2005, the applicant entered a guilty plea or admission to sufficient facts of "OP MV With License Suspended," a misdemeanor, and was placed on probation. The applicant complied with the terms of his probation and the charges were dismissed on June 15, 2006.
- (4) On October 29, 2004, the applicant was arrested by the Nantucket [Massachusetts] Police Department for "OP MV With License Suspended." [REDACTED]. On June 6, 2005, the applicant entered a guilty plea or admission to sufficient facts of "OP MV With License Suspended," a misdemeanor, and was placed on probation. The applicant complied with the terms of his probation and the charges were dismissed on June 15, 2006.

The director withdrew temporary protected status because the applicant had been convicted of two or more misdemeanors.

On appeal, counsel states that the applicant was not convicted of any of his past charges and that all counts/offenses were either dismissed, discharged found not guilty, or filed "absent finding of guilty." However, the term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the

alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

Section 322(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), specifically states that the amendment of the definition of conviction "shall apply to convictions and sentences entered before, on, or after the date of enactment of this Act. As the Supreme Court stated in *Landgraf v. US Film Prods.*, 511 U.S. 244, 114 S. Ct. 1483 (1994), the principle of applying the law in effect at the time of the decision does not conflict with the "presumption against retroactivity when the statute in question is unambiguous." Concerning the definition of conviction, the unambiguous language of section 322(c) leaves no doubt that Congress intended for the amendment in section 322(a) to be applied retroactively. *Moose v. INS*, 171 F.3d 994, 1007 (5th Cir. 1999).

The court dispositions submitted reflect that the applicant pled guilty to the offenses in Nos. 1, 3, and 4 above and the judge ordered some form of punishment in each case. Therefore, the applicant was "convicted" of these offenses for immigration purposes.

While the court records provided by the applicant confirm that these charges were all dismissed subsequent to the applicant's completion of probation requirements, 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). Consequently, the applicant remains convicted of these offenses for immigration purposes.

The applicant is, therefore, ineligible for TPS because of his misdemeanor convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS 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.