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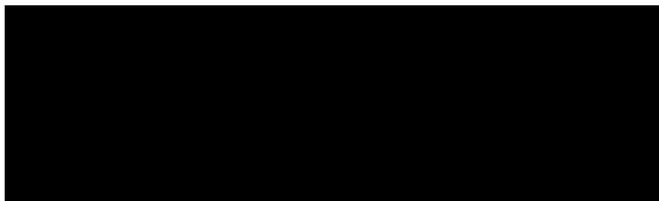


FILE: [REDACTED]
[EAC 02 185 50596]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 01 2007

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: SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on August 14, 2003. The director subsequently withdrew the applicant's Temporary Protected Status on April 5, 2006, when it was determined that the applicant had been convicted of two misdemeanors.

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 record reveals that on October 15, 1999, the applicant was arrested by officers of the Waltham, Massachusetts, Police Department and charged with stealing, altering, forging a registry document, operation of defective equipment, and operation of a motor vehicle while license suspended.

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.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits a copy of the final court disposition. The record indicates that the applicant pled guilty to one count of negligent operation of a motor vehicle which carried a penalty of a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years; and one count of operating under the influence of liquor which carried a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment (Docket # [REDACTED]). On April 11, 2005, the Massachusetts court found that it had sufficient facts to render a decision allowing the case, with respect to both counts, to be continued without a finding until April 12, 2006. The terms of the court agreement were that

the case would be continued to April 12, 2006, and that the case would be dismissed upon the completion of the conditions set forth by the Massachusetts court. The record also shows that the applicant was placed under the supervision of probation; was ordered to pay court fees, was ordered to enroll in and complete sixteen weeks of driver alcohol education, and was prohibited from using his driver's license for 45 days.

The record of proceeding reveals that the applicant has been convicted of two misdemeanor offenses committed in the United States. Although the Massachusetts court decided to continue the applicant's case for possible dismissal upon completion of the terms of probation, the applicant pled guilty and his liberty was restrained in that he was placed on probation or court supervision to enter and complete programs as directed by the probation department. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act. 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*, I.D. 3377 (BIA 1999). The charges in the instant case are considered misdemeanor offenses as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of two misdemeanor offenses, and therefore, the director's decision to withdraw the approval of the TPS application will be 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.