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



U.S. Citizenship
and Immigration
Services

[REDACTED]

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SEP 25 2009

FILE:

[REDACTED]
[WAC 01 243 54804]

Office: VERMONT SERVICE CENTER

Date:

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.

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).

John F. Grissom
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 July 27, 2001, under receipt number WAC 01 243 54804. The Director, California Service Center, approved that application on January 13, 2004.

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 in the United States.

On appeal, counsel for the applicant states that the applicant has only one misdemeanor conviction.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On January 26, 2002, the applicant was arrested by the Salinas, California Sheriff's Office for "Obstruct/Etc Pub Ofcr/Etc" and "Disord Conduct, UI/Drug." (b)(6)).
- (2) On November 21, 2004, the applicant was arrested for two counts of "DUI Alcohol/Drugs." (b)(6).
- (3) On March 21, 2005, the applicant was arrested by the Salinas, California Sheriff's Office for "DUI Alcohol/Drugs."

Pursuant to a letter dated March 20, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant provided the requested court documents. According to the court dispositions, on January 29, 2002, the applicant was convicted of "Resist/Obstruct/Delay Peace Officer" and "Disord Conduct, UI/Drug," both misdemeanors. The applicant was ordered to attend 30 AA meetings with proof to be filed with the court by March 13, 2002. On January 26, 2005, the applicant pled guilty and was convicted of one count of "DUI Alcohol/Drugs," a misdemeanor. The applicant failed to provide the final court disposition for the March 21, 2005 arrest.

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

On appeal, counsel claims that the applicant was only convicted of one misdemeanor. According to counsel, the evidence does not establish that the criminal charges filed against the applicant in 2002 resulted in convictions. 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.

The court disposition submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of punishment to the charge above. Counsel also contends that these charges were subsequently dismissed. However, 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. § 110(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. Additionally, 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*. As a result, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses. Therefore, the applicant has been "convicted" of these offenses for immigration purposes.

The applicant is ineligible for TPS because of his misdemeanor convictions.

Furthermore, counsel states that the director “noted” that the applicant failed to provide records of his March 21, 2005 arrest but this failure was not cited as a reason to withdraw the applicant’s TPS. Counsel is correct that the director failed to specifically indicate that the failure to provide the requested final court disposition is a reason to withdraw the applicant’s TPS. The record reflects that the applicant was requested on March 20, 2008 to provide the final court dispositions for all of his arrests, including the March 21, 2005 arrest. The record does not reflect that the applicant provided the requested documentation. 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). Therefore, the application must be denied for this reason as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.