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U.S. Department of Homeland Security  
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Washington, DC 20529

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**U.S. Citizenship  
and Immigration  
Services**

**MI**

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: JUL 25 2005

[SRC 01 183 56457]

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:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the appeal will be sustained.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 the applicant's TPS on February 7, 2003, because the director found a report indicating that a [REDACTED] had been convicted of a felony or two or more misdemeanors committed in the United States.

The director may withdraw the status of an alien granted TPS at any time if it is found 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. Section 244(c)(3)(A) of the Act and 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).

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.

Temporary Protected Status shall be withdrawn or revoked if the Attorney General finds that the alien was not in fact eligible for such status. Section 244(c)(3)(A) of the Act.

The record of proceeding contains a printout from the National Crime Information Center (NCIC) that reflects numerous arrests and/or convictions under the names of [REDACTED] (the applicant's name), and several other aliases. The director, therefore, withdrew the applicant's TPS after determining that the applicant was ineligible for TPS based on these arrests and convictions in Georgia:

- (1) On November 5, 1994, for obstruction of officers;
- (2) On September 13, 1996, for driving under the influence;
- (3) On November 23, 1996 for driving under the influence;

- (4) On March 15, 1998, for violation of the Georgia Controlled Substance Act;
- (5) On March 17, 1998, for probation violation;
- (6) On March 23, 1999, for giving a false name/information to police;
- (7) On December 19, 1999, for driving under the influence;
- (8) On December 29, 1999, for driving under the influence;
- (9) On February 18, 2000, for driving under the influence; and,
- (10) On June 14, 2000, for violation of the Georgia Controlled Substance Act.

On appeal, the applicant asserts that he had been wrongly accused of criminal charges. He claims that he has never been under criminal proceedings in the United States, he has never lived outside the State of Florida, he never applied or held a driver's license in the United States, and that he never visited the United States until August 2000. He states that he has submitted fingerprint cards to the Federal Bureau of Investigation (FBI), the Georgia Bureau of Investigation, and the Florida Department of Law Enforcement (FDLE), and requested that a criminal history be conducted.

The record of proceeding contains the results of the fingerprint reports from: (1) the FBI dated March 18, 2003, indicating that the applicant has no arrest record; (2) the FDLE dated March 3, 2003, indicating that no Florida criminal history was found regarding the applicant; and (3) the Georgia Bureau of Investigation, dated March 6, 2003, indicating that a search was conducted by fingerprint comparison and there was no record found regarding the applicant. The record also contains the FBI fingerprint results report, processed by the FBI on June 28, 2001, indicating a "NON-IDENT" regarding the applicant.

The records of Citizenship and Immigration Services, file number [REDACTED], for [REDACTED] aka [REDACTED] and numerous aliases, were reviewed. It is noted that, although [REDACTED] apparently did use the applicant's name as one of his many alias, that the fingerprints and photographs contained in that file do not match the fingerprints and photographs of the applicant contained in his file, [REDACTED]. Based on this information and the fingerprint results report from the FBI, the FDLE, and the Georgia Bureau of Investigation, it is concluded that the applicant was not the person arrested and/or convicted of the offenses listed in Nos. 1 to 10 above, nor was he ever deported. Therefore, the findings of the director will be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. As the director did not raise any other basis for withdrawal, the appeal will be sustained.

**ORDER:** The director's decision is withdrawn, and the appeal is sustained.