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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 02 263 50955]

Office: VERMONT SERVICE CENTER

Date: 07 28 2005

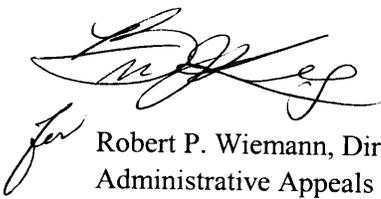
IN RE: Applicant: [REDACTED]

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 office that originally decided your case. Any further inquiry must be made to that office.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 determined that the applicant had been convicted of two misdemeanors in the United States. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the director failed to recognize that the applicant's misdemeanor convictions "constituted a single scheme of misconduct and resulted from the same act."

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation, if at the time of the initial registration period:

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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:

- (1) On March 10, 2001, the applicant was arrested by the Manassas, Virginia Police Department and charged with "Possession of Burglary Tools Tampering with Vehicle."
- (2) On March 10, 2001, the applicant was arrested by the Manassas, Virginia Police Department and charged with "Tampering with Vehicle."

Pursuant to a letter dated March 23, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above and to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In response, the applicant submitted the requested court dispositions and submitted evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. The court dispositions reveal the following dispositions:

- (1) On June 14, 2001, the applicant was convicted of "Breaking, Injuring, Defacing, Destroying, or Preventing the Operation of Vehicle, Aircraft or Boat," a misdemeanor.
- (2) On June 14, 2001, the applicant was convicted of "Injury, etc. any Property, Monument, etc." a misdemeanor.

The director determined that the applicant had been convicted of two misdemeanors. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the director failed to consider that the two misdemeanor convictions arose out of the same incident and the same act. However, as stated above, an applicant is ineligible for TPS if the alien has been convicted of **any** felony or 2 misdemeanors committed in the United States (emphasis added). There is nothing in the regulations indicating the convictions must be from different schemes; only that the applicant has been convicted of two misdemeanors or a felony. Therefore, counsel's argument does not overcome the basis for the director's decision.

The applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status 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.