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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: SEP 23 2005  
[EAC 02 162 51106]

IN RE: Applicant: [REDACTED]

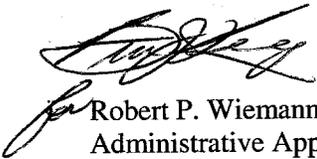
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on July 15, 2002. The director subsequently withdrew the applicant's TPS on May 26, 2004, when it was determined that the applicant had been convicted of 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. 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.

The record reveals the following offenses:

- (1) On December 15, 1998, in the General District Court-Traffic, Fairfax, Virginia, Case No. [REDACTED] (arrest date November 8, 1998), the applicant was convicted of leaving the scene of an accident (property damage), Virginia Code 46.2-894, a Class 1 misdemeanor. He was sentenced to serve 10 days in prison and ordered to pay \$130 in fines and costs.
- (2) On January 13, 1999, in the General District Court-Criminal, Fairfax, Virginia, Case No. [REDACTED] (arrest date November 8, 1998), the applicant was convicted of carrying a concealed weapon (razor), Virginia Code 18.2-308, a Class 1 misdemeanor. He was ordered to pay \$150 in fines and costs.
- (3) On January 13, 1999, in the General District Court-Criminal, Fairfax, Virginia, Case No. [REDACTED] (arrest date November 8, 1998), the applicant was convicted of "possess, sell, or transfer a document for the purpose of establishing a false status, occupation, membership, license, or identity," Virginia Code 18.2-204.1, a Class 1 misdemeanor. He was ordered to pay \$72 in fines and costs.

- (4) On April 4, 2000, in the General District Court-Traffic, Fairfax County, Virginia, Case No. [REDACTED] (arrest date February 5, 2000), the applicant was convicted of driving while intoxicated, Virginia Code 18.2-266, a Class 1 misdemeanor. He was ordered to pay \$750 in fines and costs, and his driver's license was suspended for 6 months.
- (5) On April 4, 2000, in the General District Court-Traffic, Fairfax County, Virginia, Case No. [REDACTED] (arrest date February 5, 2000), the applicant was convicted of disregarding signal by law-enforcement officer to stop; eluding police ("after having received a visible or audible signal from a law enforcement officer to stop, drive a motor vehicle in a willful or wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger other property or person, or increase the speed of the motor vehicle and attempt to escape or elude such officer"), Virginia Code 46.2-817, a Class 6 felony. He was sentenced to imprisonment for a period of 180 days, placed on probation for a period of 30 days, and ordered to pay \$52 in costs. It is noted that although § 46.2-817 is classified a Class 6 felony, the offense was declared a Class 1 misdemeanor by the court, and he was convicted of a Class 1 misdemeanor.
- (6) On February 5, 2000, in Fairfax County, Virginia, Case No. [REDACTED] the applicant was arrested for leaving the scene of an accident (property damage), Virginia Code 46.2-896, a Class 1 misdemeanor. On April 4, 2000, a *nolle prosequi* was entered on the case.
- (7) On April 4, 2000, in the General District Court-Traffic, Fairfax County, Virginia, Case No. [REDACTED] (arrest date February 5, 2000), the applicant was convicted of leaving the scene of an accident (property damage), Virginia Code 46.2-896, a Class 1 misdemeanor. He was sentenced to imprisonment for a period of 180 days, placed on probation for a period of 30 days, and ordered to pay \$2 in costs.
- (8) On February 5, 2000, in Fairfax County, Virginia, Case No. [REDACTED] the applicant was arrested for leaving the scene of an accident (property damage), Virginia Code 46.2-896, a Class 1 misdemeanor. On April 4, 2000, a *nolle prosequi* was entered on the case.
- (9) On November 5, 2001, in Fairfax County, Virginia, Case [REDACTED] the applicant was arrested for vehicle tampering, Virginia Code 18.2-146, a Class 1 misdemeanor. On November 5, 2001, a *nolle prosequi* was entered on the case.

On appeal, the applicant, through counsel, asserts that his "3" misdemeanors "are the result of one incident only and they should be treated as one only." That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. According to the court dispositions (Nos. 1, 2, 3; and Nos. 4, 5, 7 above), the applicant was charged with 6 separate violations under 6 separate case numbers, he clearly pled guilty to 6 separate crimes, and he had 6 separate sentences; therefore, the applicant has been convicted of 6 separate and distinct offenses.

Further, while the applicant asserts that he was only 18 years of age when he was convicted and he was not familiar with the American legal system, the court record clearly shows that the applicant was convicted of the crimes. Citizenship and Immigration Services is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record.

The applicant is ineligible for TPS due to his six misdemeanor convictions, detailed in Nos. 1, 2, 3, 4, 5, and 7 above). Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS 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.