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**U.S. Citizenship  
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 01 2006**  
[WAC 02 088 54325]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant claims to be 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 April 11, 2002. The director subsequently withdrew the applicant's TPS on October 8, 2005, when it was determined that the applicant had been convicted of two or more misdemeanors or a felony.

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 indicates that on January 12, 2005, in the Superior Court of California, County of Riverside, Case [REDACTED] (arrest date November 14, 2004), the applicant entered a plea of guilty to Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. The applicant was placed on probation for a period of 36 months under the condition that he serve 26 days, and ordered to pay \$1391.40 in fines and costs, attend and complete 1<sup>st</sup> offender DUI program, and his license was restricted for 3 months.

On appeal, the applicant asserts that he only has one misdemeanor offense, not two or more, and that he has completed all the programs for the DUI ordered by the court.

Despite the applicant's assertion, the court record shows that the applicant entered a plea of guilty to two misdemeanor offenses, as detailed above. Therefore, the applicant is ineligible for TPS due to his two

misdemeanor convictions. Consequently, the director's decision to withdraw the applicant's TPS will be affirmed.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Additionally, the Federal Bureau of Investigation fingerprint results report indicates that the applicant claimed he was born in Mexico and that he is a citizen of the United States. The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Mexico is not a foreign state designated for TPS under section 244 of the Act. Furthermore, the applicant's claim to United States citizenship may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(ii) of the Act.

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.