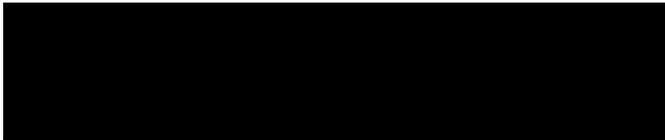


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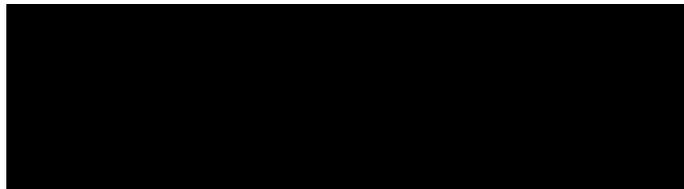
[WAC 01 198 51662]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 21 2006**

IN RE:

Applicant:



APPLICATION:

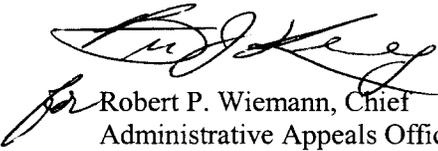
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 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 January 22, 2003. The director subsequently withdrew the applicant's TPS on January 9, 2006, when it was determined that the applicant had been convicted of two or more misdemeanor offenses.

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 August 28, 2000, in the Superior Court of California, County of Los Angeles, California, Case No. OMT08707 (arrest date July 6, 2000) the applicant (name used: [REDACTED]) was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 3, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a) VC, an infraction. On August 30, 2000, the applicant was convicted of Counts 2 and 4. He was placed on probation for a period of 36 months under the condition that he serve 48 hours in the county jail; ordered to pay the total of \$1,170 in fines and costs, and enroll and successfully complete a 3-month first-offender alcohol and other drug education and counseling program, as to Count 2. He was ordered to pay the total of \$324 in fines and costs or perform 56 hours of community service as to Count 4. Counts 1 and 3 were dismissed.

- (2) The Federal Bureau of Investigation fingerprint results report and the State of California, Department of Justice, Bureau of Criminal Identification report indicates that on February 23, 2001, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "failure to appear: written promise," 40508(a) VC, a misdemeanor. It is not clear from the record whether the applicant was subsequently convicted of this offense although the record of the Los Angeles Superior Court-Metropolitan Courthouse (Citation No. [REDACTED]) indicates that on July 5, 2001, the applicant was ordered to pay \$787 in fines and costs.
- (3) On August 30, 2001, in the Superior Court of California, County of Los Angeles, Case No. 1GL03221 (arrest date August 1, 2001), the applicant (name used: [REDACTED]) was convicted of unlicensed driver, 12500(a) VC, a misdemeanor. He was ordered to pay the total \$305 in fines and costs, and to perform 23 hours of community service.

On appeal, the applicant asserts that he was never requested to submit any more documents. He submits additional documents in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite period.

The applicant was convicted of at least two misdemeanor offenses; therefore, he is ineligible for TPS. 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.