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

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: DEC 06 2006
[EAC 02 008.50052]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of the application was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal.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 withdrew approval of the applicant's TPS because he found the applicant ineligible due to his having been convicted of a drug-related offense.

On appeal, counsel for the applicant submits a brief and documentation.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals that the applicant pled guilty to Possession of Marijuana on December 4, 2003 in Montgomery, Maryland.

On appeal, counsel requests that the applicant's TPS be reinstated because his drug offense relates to simple possession of thirty grams or less of marijuana, and based on humanitarian reasons and family unity considerations.

Counsel states that the applicant is eligible for a waiver of this ground of inadmissibility because he was convicted of a single offense of simple possession of less than 30 grams of marijuana. However, the record reveals that counsel has failed to apply for a waiver of grounds of inadmissibility. Furthermore, *Matter of Grijalua*, 19 I&N Dec. 713, 718 (BIA 1988), holds that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or other evidence to meet the burden of proving that his conviction is related to less than 30 grams of marijuana. Counsel asserts that according to the police report, the applicant only possessed "a marijuana roach." However, the police report also states that the applicant possessed "a piece of tin foil containing a green leafy substance." The amount of marijuana in this packet has not been revealed.

The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) due to his having been convicted of a drug-related offense. Section 244(c)(2)(A)(iii) of the Act and 8 C.F.R. § 244.3(c)(1). Consequently, the director's decision to withdraw approval of 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.