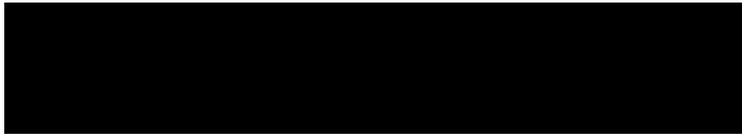


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OFFICE: CALIFORNIA SERVICE CENTER

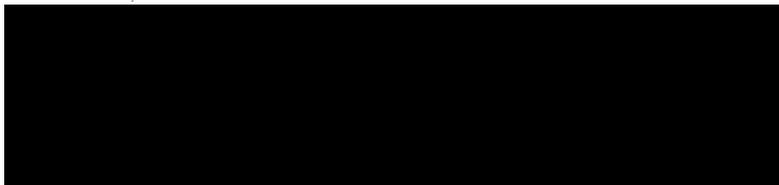
DATE: JUN 01 2006

[WAC 05 117 73337]

[WAC 01 184 50504]

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 application was denied by the Director, California Service Center, and 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 record indicates that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 184 50504. That application was approved on August 27, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 25, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant had been convicted of two misdemeanors committed in the United States.

In this case, however, the director should have withdrawn the applicant's TPS status rather than to deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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. See 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 December 8, 2003, in the Superior Court of California, County of Los Angeles, Case [REDACTED] (arrest date October 25, 2003), the applicant, under the name [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; and Count 3, unlawfully obstruct a peace officer, 148(a)(1) PC, a misdemeanor. On April 5, 2004, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 36 months, ordered to pay \$1,324 in fines, costs and restitution, enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and his driving was restricted for 90 days, as to Count 2. He was placed on probation for a period of 36 months, and ordered to pay \$960 in fines and costs, as to Count 3. Count 1 was dismissed.

On appeal, the applicant expresses remorse for his past behavior, and requests that his application be approved.

The applicant was convicted of two misdemeanors, detailed above; therefore, he is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statement made on appeal has been considered; however, there is no waiver available for convictions of a felony or two or more misdemeanors committed in the United States. Consequently, the applicant's temporary protected status will be withdrawn.

In removal proceedings held on November 14, 1996, the applicant failed to appear; therefore, the Immigration Judge ordered the applicant removed to El Salvador *in absentia*. A Warrant of Removal/Deportation, Form I-205, was issued on December 16, 1996. On March 28, 1998, in Los Angeles, California, the applicant was removed from the United States to El Salvador (file A74 805 674).

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.