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**U.S. Citizenship
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Services**

MM



FILE: [REDACTED]
[EAC 02 270 50504]

Office: VERMONT SERVICE CENTER

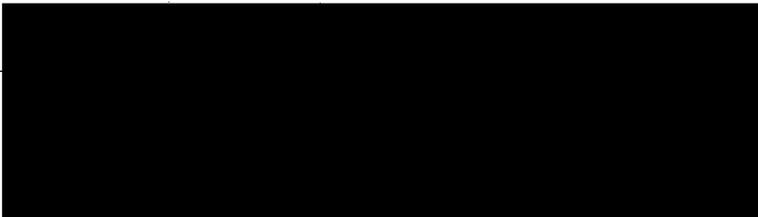
Date: **NOV 27 2006**

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:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The Director, Vermont Service Center, also denied the applicant's re-registration application.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on August 24, 2004. The director subsequently withdrew the applicant's Temporary Protected Status on March 10, 2006, when it was determined that the applicant had failed to submit final court dispositions as requested.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1). If a decision to withdraw Temporary Protected status is entered by the AAO, the AAO shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in removal proceedings, if the alien is then removable. 8 C.F.R. § 244.14(c).

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 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 reveals the following offenses:

- (1) On November 15, 1988, the applicant was found guilty of the offense of driving while impaired in violation of VTL 1192.1, misdemeanor.
- (2) On February 2, 1989, the applicant was found guilty of the offense of aggravated unlicensed operator of a motor vehicle in violation of VTL 511.2 02, misdemeanor.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS.

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.

The applicant is ineligible for TPS due to his two misdemeanor convictions as detailed 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 under 8 C.F.R. § 244.14(a)(1) will be affirmed.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being withdrawn, the appeal from the denial of the re-registration will be dismissed.

ORDER: The appeal is dismissed.