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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 12 2006
[WAC 02 065 54439]

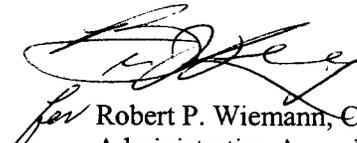
IN RE: Applicant: [REDACTED]

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.


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 March 4, 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 misdemeanors.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on May 19, 2005, to submit the final court dispositions of any and all arrests, including his arrests listed in the FBI report. In response, the applicant submits the court dispositions of the following offenses:

- (1) On February 2, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date June 17, 2000), the applicant was convicted of disorderly conduct: prostitution, 647(b) PC, a misdemeanor. He was placed on probation for a period of 12 months, and ordered to pay the total of \$459 in fines and costs.
- (2) On April 19, 2004, in the Superior Court of California, County of Los Angeles, Case [REDACTED] (arrest date March 27, 2004), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor. On April 21, 2004, the court ordered the complaint amended by interlineation to add the misdemeanor offense of 23109(c) VC, exhibition of speed/engage in aiding and abetting, as Count 2. The court found the applicant guilty as to Count 2, and he was placed on probation for a period of 24 months, and ordered to pay the total of \$776 in fines and costs.

On appeal, the applicant asserts that one of the misdemeanors was extremely minor, he received only a fine, and it occurred six years ago. He requests that his TPS be reinstated because he has lived in the United States for 13 years, he has a United States citizen child, and his wife has TPS status.

The fact that the applicant was sentenced to probation and received fines is not evidence that the applicant's convictions are not misdemeanors. The court disposition clearly indicates that the applicant was convicted of the misdemeanor offense of 647(b) PC and the misdemeanor offense of 23109(c) VC, both offenses punishable by imprisonment of more than five days. 8 C.F.R. § 244.1. Additionally, a time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 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 will be affirmed.

It is noted that on April 12, 2002, in Los Angeles, California, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.