



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

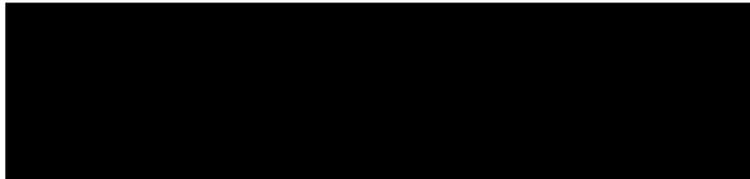
Date: APR 19 2007

[incorporated herein]

[EAC 02 163 52776]

IN RE:

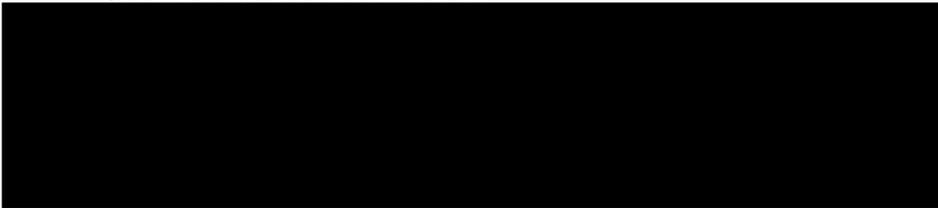
Applicant:



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 California Service Center. 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: The application was initially approved. The approval was subsequently withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal.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 claims to be a 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 reveals that the applicant filed a TPS application during the initial registration period. The Director, VSC, withdrew the approval of the TPS application on March 8, 2006, because the record of proceedings showed that the applicant had been convicted of two or more misdemeanors.

On appeal, counsel concedes the applicant's September 2000 and June 2004 convictions, but states that the service center director abused her discretion when she chose to exercise her power to withdraw the applicant's TPS status.

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).

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:

- On September 20, 2000, the applicant was convicted in the State of New York of one count of operating a motor vehicle while intoxicated.
- On June 22, 2004, the applicant was convicted in the State of New York of one count of offering a false instrument for filing. (Docket # [REDACTED])

The applicant is ineligible for TPS due to his record of two or more 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 application for this reason will be affirmed.

It is noted that an outstanding warrant of deportation, dated May 5, 1995, for the removal of the applicant from the United States to Guatemala remains outstanding. It is also noted in the record that the applicant was found guilty of harassment in Albany, New York, on November 2, 1994, and received a sentence of "time served." It is further noted that on that same date, in response to an inquiry from the immigration officer during an alien interview, the applicant stated that he was a citizen and national of Guatemala and that neither he nor his parents had ever been citizens of any other country [REDACTED]. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). For this additional reason, the appeal will be dismissed.

The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial. 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.