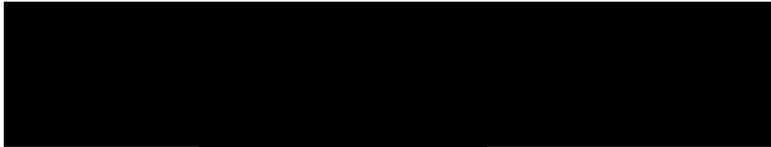




U.S. Citizenship
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Services

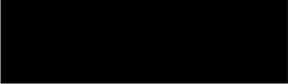
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prevent clearly unwarranted
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FILE:



[EAC 01 225 53043]

OFFICE: VERMONT SERVICE CENTER

DATE: APR 20 2007

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.

Cindy M. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 October 23, 2001. The director subsequently withdrew the applicant's TPS on September 14, 2005, when it was determined that the applicant had been convicted of two misdemeanor offenses.

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.

The record reveals the following offenses:

- (1) On July 25, 2001, in Saugerties, New York, the applicant was arrested for Count 1, operating a motor vehicle while under the influence of drug or alcohol (.10 of one per centum or more by weight of alcohol in the person's blood), VTL 1192.2, a misdemeanor; Count 2, failure to keep to the right, VTL 1120a, an infraction; Count 3, unlicensed operator, VTL 509.1, a misdemeanor; and Count 4, speed not reasonable, VTL 1180a, an infraction. Count 1 was subsequently reduced to driving while ability impaired, VTL 1192.1, and on September 12, 2001, in the Saugerties Town Court, Ulster County, New York (Case No. [REDACTED]) the applicant was convicted of the reduced charge of VTL 1192.1 as to Count 1. He was ordered to pay \$300 in fines. Counts 2, 3, and 4 were dismissed.
- (2) On December 16, 2002, in Woodstock, New York, the applicant was arrested for Count 1, "drove left of center," VTL 1120.A, an infraction; Count 2, driving while intoxicated, VTL 1192.3, a misdemeanor; and Count 3, driving while intoxicated (.10 of one per centum or more by weight of alcohol in the person's blood), VTL 1192.2, a misdemeanor. On January 15, 2003, in the Woodstock Justice Court, Ulster County, New York (Case No. [REDACTED]), the applicant

was convicted of Count 3. He was ordered to pay \$625 in fines and costs. The dispositions as to Counts 1 and 2 indicate "Covered." The applicant did not identify this disposition although the director, in the notice of intent to deny dated July 27, 2005, advised the applicant that the "charge and disposition must be specifically identified and clearly discernable (not just numeric citations, abbreviations or codes)."

New York State law provides that a violation of NY VTL 1192.1 is punishable by up to 15 days of incarceration. Therefore, it is concluded that the applicant's conviction of No. 1 above qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

Despite the applicant's assertion, on appeal, that he paid his fines and he attended the rehabilitation classes, he remains convicted of the two misdemeanor convictions as detailed in Nos. 1 and 2 above.

Accordingly, the applicant is ineligible for TPS due to his record of at least two misdemeanor convictions. 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.

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.