



U.S. Citizenship  
and Immigration  
Services

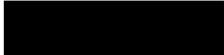
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 23 2007

[WAC 01 226 81360]

IN RE:

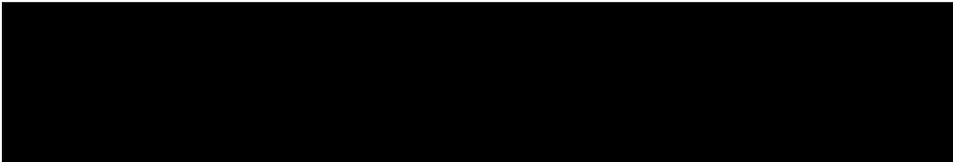
Applicant:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant claims to be 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 January 20, 2004. The director subsequently withdrew the applicant's TPS on August 7, 2006, because the applicant had failed to provide sufficient evidence to establish that he had not been convicted of a felony or two or more 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.

Based on information received from the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on July 7, 2005, to submit the final court dispositions of all violations and/or arrests, including his arrest listed on the FBI report. Because court documents furnished by the applicant, in response, were insufficient to establish that the applicant was not, in fact, convicted of a felony or two or more misdemeanors, the director withdrew the applicant's TPS status on August 7, 2006.

On appeal, counsel submits the final court disposition of the applicant's arrest on March 27, 2005, and states that although the applicant was charged with two drunk driving statutes, he was punished under only one of the statutes, and the other was stayed pursuant to Penal Code 654; therefore, the applicant was convicted of only one misdemeanor. Counsel further asserts that the applicant "has only one other conviction not discussed here because it was an infraction."

The record indicates that on March 29, 2005, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] (arrest date March 27, 2005), the applicant was indicted for Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On March 29, 2005, the applicant entered a plea of guilty as to both Counts 1 and 2, and the court accepted the plea. He was placed on probation for a period of 3 years, ordered to pay \$597 in fines and costs, his driver's license was restricted for 90 days, to attend and complete a 3-month Level 1 First Offender Alcohol Program, and to attend and complete Mothers Against Drunk Driving (MADD) Victim's Impact Panel, as to Count 1. Sentence was stayed as to Count 2, pursuant to Penal Code 654 [duplicate provisions of code].

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The record, in this case, indicates that although the applicant had entered a plea of guilty as to Count 2 [23152(b) VC], the judge ordered no form of punishment, penalty, or restraint on the alien's liberty to be imposed. Therefore, Count 2 is not a conviction within the meaning of section 101(a)(48)(A) of the Act.

However, counsel on appeal asserts that the applicant "has only one other conviction not discussed here because it was an infraction." The director, in his request for evidence dated July 7, 2005, advised the applicant: "If any other violations and/or arrests have occurred, provide information and the outcome of those cases as well." The applicant has failed to provide the final court dispositions of all of his arrests as had been requested by the director.

The applicant is, therefore, ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to withdraw the applicant's temporary protected status will be affirmed.

It is noted that the applicant had furnished only one piece of evidence to establish his residence and physical presence in the United States during the requisite period. The applicant furnished a copy of an earnings statement received from Personnel Plus, Inc., Norwalk, CA, for the period ending January 27, 2001. This evidence cannot be accepted as credible. The earnings statement listed the applicant's Social Security Number as [REDACTED]. However, on Part 2 of the initial TPS application (Form I-821), the applicant listed "None" under "Social Security Number." On subsequent TPS re-registrations (Form I-821) and Application for Employment Authorization (Form I-765) the applicant listed [REDACTED] as his Social Security Number. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). No other documentary evidence was furnished to establish continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application on April 30, 2001.

The applicant has failed to establish that he has met the criteria for continuous residence and continuous physical presence in the United States as described in 8 C.F.R. § 244.2(b) and (c). The applicant's temporary protected status will also be withdrawn for this reason.

The applicant has failed to provide the final court disposition of his arrest detailed in No. (1) above. The applicant is, therefore, ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to withdraw the applicant's temporary protected status will be affirmed.

**ORDER:** The appeal is dismissed.