



U.S. Citizenship
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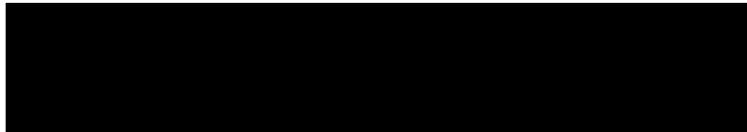
OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 13 2007

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[WAC 05 221 86116]

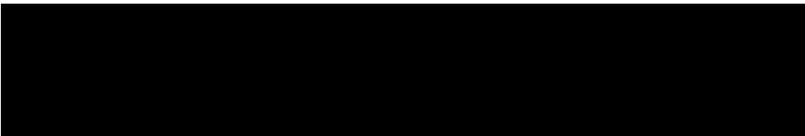
IN RE:

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 March 6, 2002. The director subsequently withdrew the applicant's TPS status on September 19, 2006, because the applicant had been convicted of a felony or two or more misdemeanors. Within the same decision, the director denied the applicant's re-registration application, filed on May 9, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 221 86116, also because the applicant had 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).

On appeal, the applicant submits a statement.

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.

In a notice of intent to withdraw dated May 9, 2006, the applicant was requested to submit the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation fingerprint results report. In response, the applicant submitted the records of the 272nd District Court, Brazos County, Texas, under [REDACTED], indicating that on August 30, 2004, the applicant was convicted of "driving while intoxicated with child under 15 years of age," a felony. He was

sentenced to a State Jail Facility for a period of two years, imposition of sentence suspended, and the applicant was placed on probation for a period of 4 years, ordered to pay \$868 in fines and costs, and to perform 180 hours of community service

On appeal, the applicant asserts that his criminal defense attorney never advised him of the immigration consequences of pleading guilty to the crime for which he was charged, and that he plans to obtain another criminal defense attorney to defend him against the charges.

The court record clearly shows that the applicant was convicted of the felony offense. CIS is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Accordingly, the applicant is ineligible for TPS due his felony conviction. 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 and to deny the re-registration application will be affirmed.

It is noted that the record contains a statement from the Municipal Mayor of Alcala Municipal, Lolotique, indicating that the applicant appeared at his office "requesting a Personal Identity Card to be issued which could not be issued because there are non in existence an the order that was placed will take some months, but is an honest person, honest and of very good conduct with all the authorities to whom I known personally and I attest to that." The applicant, however, has not submitted his El Salvadoran identity card. Nor did the applicant submit a copy of his birth certificate with English translation, or a passport, to establish his nationality as required by 8 C.F.R. § 244.9(a)(1).

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.