



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **AUG 15 2007**
[EAC 01 245 52114]

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:
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The approval of the application was withdrawn by the Director, Vermont Service Center. The application 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 is seeking to maintain Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because he found the applicant ineligible for TPS due to his two misdemeanor convictions in the United States.

On appeal, counsel for the applicant asserts that the charges are modest in nature and deserved to be merged in order to maintain the eligibility of the applicant.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;

- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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:

- (1) On August 6, 2004, the applicant was arrested and charged with Driving Under the Influence of Alcohol. The applicant was subsequently convicted of a reduced charge of reckless driving in violation of 46.2-852, a class 1 misdemeanor.
- (2) On August 6, 2004, the applicant was arrested and charged with carrying a concealed weapon. The applicant was subsequently convicted of a reduced charge of disorderly conduct in violation of section 18.2 – 415, a class 1 misdemeanor.

On appeal, counsel for the applicant states the charges were modest and should be "merged" to avoid harsh immigration consequences, noting that the convictions were reduced.

Counsel for the applicant has made two negligently incorrect statements. In response to the director's request for evidence, which he referenced on appeal, counsel stated that the Virginia Code Section 18.2-415 was not a misdemeanor, when the text of that code section clearly states that it is a misdemeanor. In addition, counsel stated that the applicant was "arrested on August 6, 2004, and charged with two offenses: reckless driving and disorderly conduct in a public place." The evidence in the record clearly shows that the applicant was arrested on August 6, 2004, and initially charged with driving under the influence of alcohol and carrying a concealed weapon. Regardless of any subsequent reduction, mischaracterization of an alien's arrest record is inappropriate, particularly when the offenses were not revealed on the applicant's Form I-821, as required.

Section 46.2-868 of the Virginia Code states: "Every person convicted of reckless driving under the provisions of this article shall be guilty of a class 1 misdemeanor."

Counsel's assertion that the applicant's misdemeanors arose from a single arrest and, therefore, should be counted as a single misdemeanor offense, is meritless. The fact that the offenses arose from a common scheme does not categorize them as one crime. The applicant was charged with two separate counts and convicted of two separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses.

The applicant is ineligible for TPS due to two misdemeanor convictions 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 TPS for this reason 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.