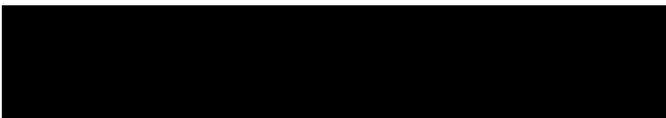


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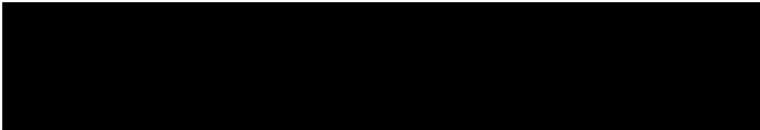
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 23 2007**  
[WAC 05 151 70943]  
[LIN 02 022 527061]

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:



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, Director  
Administrative Appeals Office

**DISCUSSION:** Approval of the applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center (CSC), and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of El Salvador who was granted TPS. The CSC director subsequently withdrew the applicant's TPS and denied the re-registration application, when it was determined that the applicant has been convicted of a felony or two or more misdemeanors committed in the United States.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien failed 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).

The record reveals that on April 13, 2003, the Director, Nebraska Service Center approved the application for TPS. The record also reveals that the applicant subsequently applied to re-register for TPS on February 28, 2005.

On October 3, 2006, the CSC director determined that the applicant was ineligible for TPS and withdrew his TPS. The applicant filed the current appeal from that decision on December 4, 2006.

On appeal, counsel argues that the applicant was pursuing post-conviction relief within the State courts, and thus the director's determination is premature.

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 February 3, 1999, the applicant was convicted of operating a vehicle with blood alcohol content of .10% or greater, a misdemeanor.
- (2) On February 27, 2003, the applicant was convicted of operating while intoxicated, a misdemeanor.

On appeal, counsel argues that the applicant was pursuing post-conviction relief within the State courts, and thus the director's determination is premature.

However, a review of the record reveals that the applicant had completed pursuing such post-conviction relief. The applicant was initially convicted on February 27, 2003 of Operating While Intoxicated, a Class D Felony. An Allen County, Indiana Circuit Court Judge issued an order of sentence modification on January 27, 2006, vacating the felony conviction and retroactively modifying the conviction to a Class A Misdemeanor, after the applicant successfully completed his probation and Alcohol Abuse Deterrent Program.

The applicant is ineligible for TPS due to his record of two misdemeanors, 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 deny the application for this reason will be affirmed.

It is noted that CIS records reflect that the applicant was apprehended on April 30, 2000, while attempting to enter the United States at Houston International Airport using fraudulent documentation. He was expeditiously removed to El Salvador on May 1, 2000.

An alien applying for TPS 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.