



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 17 2007
[WAC 05 141 72754]

IN RE: Applicant: [REDACTED]

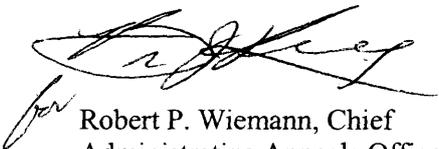
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 June 24, 2003, under Citizenship and Immigration Services (CIS) receipt number WAC 01 202 51913. The director subsequently withdrew the applicant's TPS on October 8, 2005, when it was determined that the applicant had been convicted of two misdemeanors.

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. *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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on May 12, 2005, to submit the final court dispositions of all of his arrests, including arrests listed in the FBI report. In response, the applicant submitted the court disposition of the following:

On January 23, 2001, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] (arrest date January 22, 2001), the applicant (name used: [REDACTED]) was indicted for Count 1, assault (simple), 240 PC, a misdemeanor; Count 2, battery, 242 PC, a misdemeanor; Count 3, terrorist threats, 422 PC, a misdemeanor; and Count 4, vandalism, 594(a) PC, a misdemeanor. On February 5, 2001, the applicant entered a plea of guilty to Counts 2 and 3. He was placed on probation for a period of 3 years, ordered to pay restitution fine in the amount of \$100, sentenced to 30 days in the

county jail, and to make restitution in an amount and manner to be determined by "VWAP," as to Count 2. He was placed on probation for a period of 3 years, and to make restitution in an amount and manner to be determined by "VWAP," as to Count 3. Counts 1 and 4 were dismissed.

The director determined that the applicant was ineligible for TPS based on his two misdemeanor convictions and withdrew the initial TPS application October 8, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 18, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on October 8, 2005, because the applicant's initial TPS application had been withdrawn and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the director erred in finding that the applicant had been convicted of two or more misdemeanors; specifically, the applicant's conviction only constitutes a single misdemeanor conviction and not two.

Counsel's assertion cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with four separate counts and he pled guilty to 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. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

The applicant is ineligible for TPS due his 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 deny the application 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.