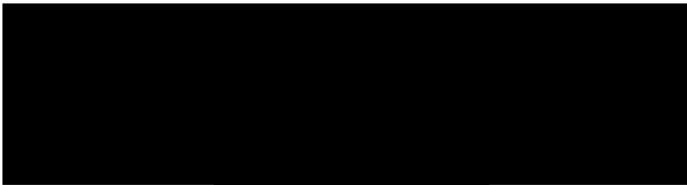




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 05 208 86265]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 24 2007**

IN RE: Applicant: [REDACTED]

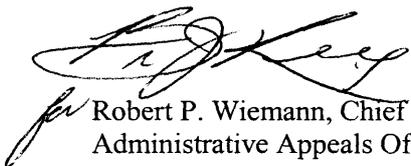
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 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 January 21, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 01 198 51127. The director subsequently denied that application on September 21, 2005, when it was determined that the applicant had been convicted of two misdemeanors. The applicant filed an appeal from the denial decision.¹ The director rejected the appeal on January 9, 2006, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3). In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the initial TPS application.

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).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 27, 2005, and indicated that he was re-registering for TPS.

The director withdrew the applicant's TPS status on May 18, 2006, because the applicant was convicted of two misdemeanors.

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.

¹ The director advised the applicant that he could appeal the director's decision by filing a completed Form I-290B to the California Service Center with a filing fee of \$110, within 30 days of the decision. The appeal was received at the Service Center on October 26, 2005. [Coupled with three days for mailing, the appeal, in this case, should have been filed on or before October 25, 2005.] The appeal was returned advising the applicant that the fee for the application is \$385, effective September 28, 2005. The applicant re-filed the appeal with the correct fee on December 14, 2005.

The record reveals the following:

- (1) On December 27, 2004, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date September 26, 2004), the applicant was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, hit and run/property damage. On February 3, 2005, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 36 months under the condition that he serve 10 days in the county jail, ordered to pay \$1,527 in fines and costs, enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days as to Count 2. He was placed on probation for a period of 36 months, and ordered to pay \$901 in fines and costs as to Count 3. Count 1 was dismissed.

On appeal, counsel asserts that although the applicant was convicted of two crimes, these two convictions arose out of a single scheme of criminal conduct; therefore, the applicant did not commit two separate misdemeanor crimes but, rather, was convicted of one criminal act.

That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS or his admissibility under section 212(a) of the Act. According to the court disposition, the applicant was charged with three separate offenses or counts, he clearly entered a plea of *nolo contendere* to two separate offenses or counts, the court found him guilty of two separate offenses, and the court ordered two separate sentences or punishments. Therefore, the applicant had been convicted of two separate and distinct misdemeanor 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, therefore, ineligible for TPS due to 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 withdraw the applicant's temporary protected status 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.