



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



M1

FILE: [REDACTED]  
[EAC 01 202 56520]

Office: VERMONT SERVICE CENTER

Date: JUL 27 2007

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 office that originally decided your case. Any further inquiry must be made to that office.

*Cindy M. Gomez for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on January 15, 2002. The director subsequently withdrew the applicant's Temporary Protected Status on February 27, 2006, when it was determined that the applicant had been convicted of four misdemeanors.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

Based upon United States Citizenship and Immigration Services (USCIS) records, the director requested that the applicant submit final court dispositions stemming from his arrest on June 14, 2004, at which time he had been charged with assault with a dangerous weapon. The applicant responded by submitting the final court dispositions on September 26, 2005. The director determined that the applicant had been convicted of two or more misdemeanors, and subsequently withdrew the approval of the TPS application on February 27, 2006.

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.

Section 101(a)(48)(A) of the Act defines "conviction."

The term *conviction* means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

In the instant case, the record reveals that on August 16, 2004, the applicant made an Admission to Sufficient Facts accepted by the Court "after colloquy" on two counts of assault and battery with a dangerous weapon, one count of assault with a dangerous weapon, and one count of assault and battery. The record also shows that the applicant was fined \$90.00 "V/W assessment" on one count of assault and battery with a dangerous weapon. The record further shows that the disposition indicates that sufficient facts were found, but that the case would be continued without a guilty finding until February 16, 2006, on all counts. For immigration law purposes, although the court withheld the adjudication of guilt until February 16, 2006, when the case was dismissed, the applicant was convicted of only one misdemeanor (assault and battery with a dangerous weapon) where the court's order contained some form of punishment, penalty, or restraint on the person's liberty. Therefore, the applicant has been convicted of only one misdemeanor offense, and the director's decision with respect to this issue will be withdrawn.

However, the record of proceedings does not contain sufficient evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c). Documentation submitted by the applicant from his alleged employer during part of the requisite time frame at Polcaris Enterprises, Inc., bears a different social security number than other evidence submitted. The photocopied earnings statements from Polcaris Enterprises, Inc. appear to have been altered as the applicant's name seems to have been inserted over the original employee's name. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The TPS application will be remanded for a new decision with respect to whether the applicant has submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite time periods.

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 director's decision with respect to the applicant's criminal convictions will be withdrawn, and the case will be remanded.