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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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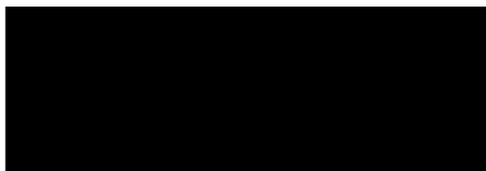


FILE: [REDACTED]
[LIN 01 189 51958]

OFFICE: VERMONT SERVICE CENTER

DATE: JUN 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.

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

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on September 22, 2001. The director subsequently withdrew the applicant's Temporary Protected Status on March 8, 2006, when it was determined that the applicant had been convicted of two or more 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).

On appeal, counsel states that the applicant has only been convicted of one misdemeanor and is therefore eligible for TPS.

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 in Aurora, Colorado:

- On December 6, 2002, the applicant was convicted of disturbing the peace, a misdemeanor offense, and sentenced to 180 days of imprisonment that was suspended, with a period of supervised probation.
- On December 6, 2002, the applicant was convicted of resisting arrest, a misdemeanor offense, and sentenced to 180 days of imprisonment that was suspended, with a period of supervised probation.
- On December 6, 2002, the applicant was convicted of resisting arrest, a misdemeanor offense, and sentenced to 180 days of imprisonment that was suspended, with a period of supervised probation.

On appeal, counsel asserts that because the applicant's misdemeanor charges occurred on the same date, and under the same set of circumstances, they merge into a single charge, and should be treated as one and not three separate misdemeanor convictions.

Counsel for the applicant asserts on appeal that since the applicant's misdemeanors arose in a single occasion they should be considered a single misdemeanor offense. 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 three separate misdemeanor offenses and was found guilty of all the 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 merger doctrine" is not applicable for purposes of determining the applicant's eligibility for TPS because the applicant has been convicted of three separate and distinct misdemeanor offenses.

Counsel further asserts that the applicant's convictions are "petty offense[s]" and should not count against him for immigration purposes. However, as stated above, each of the convictions resulted in a jail sentence of 180 days. Therefore, these offenses clearly satisfy the definition of misdemeanor in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of three misdemeanor convictions as 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 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.