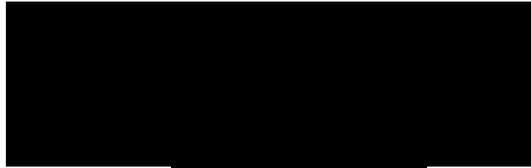


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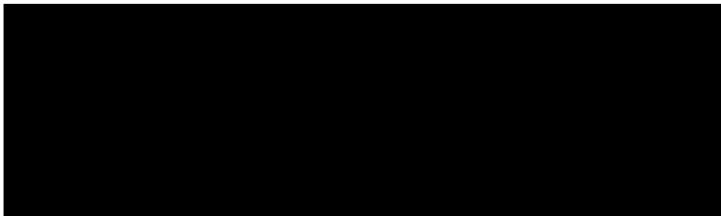
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 26 2007**
[WAC 01 245 51856]
[WAC 05 211 79837]

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, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 claims to be 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 February 10, 2004. The director subsequently withdrew the applicant's TPS status on August 3, 2006, when it was determined that the applicant had failed to submit sufficient evidence to establish that he had not been convicted of a felony or two or more misdemeanor offenses as had been requested in the notice of intent to withdraw (ITW) dated May 22, 2006. Within the same decision, the director denied the applicant's re-registration application, filed on April 27, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 211 79837, because the applicant had failed to submit the final court dispositions of all of his arrests.

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).

On appeal, counsel submits a statement and court dispositions relating to his arrests.

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.

The Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested: (1) on April 12, 2003, in Los Angeles, California, for driving under the influence of alcohol drugs; and (2) on June 6, 2006, in Norwalk, California, for driving under the influence of alcohol with .08 percent blood alcohol level or more. In a notice of intent to withdraw dated May 22, 2006, the applicant was requested to submit the final court dispositions of all of his arrests, including the arrests listed above. Because the applicant failed to submit the court dispositions of all of his arrests, the director withdrew the applicant's TPS status.

On appeal, counsel submits the court's final disposition of the applicant's arrest of April 12, 2003, and asserts that the arrest of June 6, 2003, does not pertain to the applicant or that it is a mistake.

The court records indicate that on April 12, 2003, in the Superior Court of California, Los Angeles Judicial District, County of Los Angeles, Case No. [REDACTED] the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; Count 2, driving without a license, 12500(a) VC, a misdemeanor; Count 3, failure to prove financial responsibility, 16028(a) VC, an infraction; Count 4, driving under the influence of alcohol with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 5, hit and run-property damage, 20002(a) VC, a misdemeanor. On May 8, 2003, the applicant was convicted of Counts 4 and 5. He was placed on probation for a period of 36 months, ordered to work 10 days for "CALTRANS/Graffiti Removal" or serve jail time, and also ordered to pay \$490 in fines and costs as to Count 4. He was placed on probation for a period of 36 months, ordered to work 10 days for "CALTRANS/Graffiti Removal" or serve jail time as to Count 5. While counsel asserts that the June 6, 2006 arrest does not pertain to the applicant, the court records indicate that the June 6, 2006 arrest relates to this same case (Case No. [REDACTED]). The records indicate that on June 6, 2003, a bench warrant was issued for the arrest of the applicant based on the offense/conviction of driving under the influence of alcohol with .08 percent blood alcohol level or more (Count 4 above). The outcome of that bench warrant is not reflected in the record.

Accordingly, the applicant is ineligible for TPS due to his two misdemeanor convictions (Counts 4 and 5 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 TPS will be affirmed.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.