



U.S. Citizenship
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FILE: [REDACTED]
[EAC 01 163 50642]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 26 2007

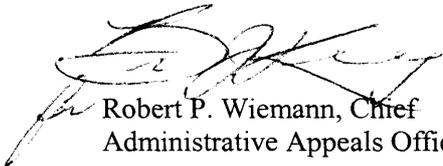
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 August 8, 2002. The director subsequently withdrew the applicant's TPS on October 28, 2005, when it was determined that the applicant had been convicted of two misdemeanor offenses.

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, the applicant states that he needs an additional 30 days in which to submit a brief and evidence because he is awaiting legal papers from the Court of the City of Colonie, New York. To date, however, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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 record reveals the following offenses:

- (1) On January 27, 2003, in the Colonie Town Court, Albany County, State of New York, Case No. [REDACTED] (arrest date November 4, 2002), the applicant was convicted of driving while ability impaired, VTL 1192.1, a misdemeanor. He was sentenced to 90 days in jail, suspended, and ordered to pay \$335 in fines and costs.
- (2) On January 21, 2004, in the Colonie Town Court, Albany County, State of New York, Case No. [REDACTED] (arrest dated December 22, 2003), the applicant was convicted of operating a motor vehicle while under influence of drug or alcohol, VTL 1192.3, a misdemeanor. He was ordered to pay \$690 in fines and costs, and his license was revoked for 6 months.

- (3) The Federal Bureau of Investigation fingerprint results report indicates that on December 2, 1988, in Santa Barbara, California, the applicant was arrested for hit and run/property damage. The final court disposition of this arrest is not contained in the record.
- (4) The applicant submitted four letters dated February 27, 2002, from the Superior Court of California, County of Santa Barbara, Criminal Division, indicating that they have no records of the proceedings relating to the applicant (listed below) because case files were destroyed on January 17, 2002. Destruction of court records, however, is not evidence that conviction(s) had been dismissed:
 - (a) Case No. [REDACTED] filing date July 18, 1988, for 23152(a) VC, driving under the influence, a misdemeanor.
 - (b) Case No. [REDACTED] filing date December 9, 1988, for 23152(a) VC, driving under the influence, a misdemeanor.
 - (c) Case No. [REDACTED] filing date December 14, 1998, for 647(f) PC, disorderly conduct-under the influence of drug/alcohol, a misdemeanor.
 - (d) Case No. [REDACTED] filing date December 16, 1998, for 23152(a) VC, driving under the influence, a misdemeanor.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions. 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.

The record indicates that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on April 9, 1991, in New Orleans, Louisiana, based on the applicant's entry into the United States without inspection on or about April 4, 1991.

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.