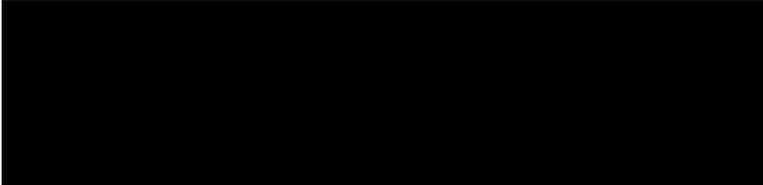




U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy**



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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

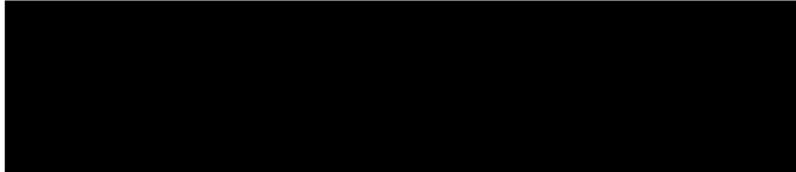
DATE: **MAR 27 2007**

[WAC 01 235 52683]

[WAC 05 127 70122]

IN RE:

Applicant:



APPLICATION:

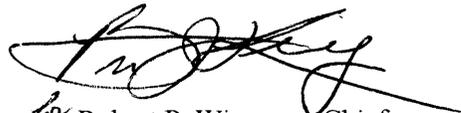
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 1, 2004. The director subsequently withdrew the applicant's TPS status on June 1, 2006, when it was determined that the applicant was convicted of two or more misdemeanors. Within the same decision, the director denied the applicant's re-registration application, filed on February 4, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 127 70122, because the applicant was ineligible for TPS based on his misdemeanor convictions.

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 submits a statement and resubmits copies of 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 record reveals the following offenses:

- (1) On August 25, 1998, in the General District Court, Traffic Division, Fairfax County, Virginia, Case No. [REDACTED] (arrest dated June 26, 1998), the applicant (name used: [REDACTED]) was convicted of driving without a license, Virginia Code § 46.2-300, a Class 2 misdemeanor. He was ordered to pay \$102 in fines and costs.
- (2) On August 31, 1998, in the General District Court, Criminal Division, Fairfax County General, Virginia, Case No. [REDACTED] (arrest dated June 26, 1998), the applicant (name used: [REDACTED])

[REDACTED] was convicted of "obtain or possess false identification for the purpose of creating a false status or identity," Virginia Code § 18.2-204.1, a Class 1 misdemeanor. He was ordered to pay \$300 in fines and costs.

- (3) The Federal Bureau of Investigation fingerprint results report indicates that on November 4, 2001, in Las Vegas, Nevada, the applicant was arrested for evading a police officer. The applicant subsequently submitted the records of the Justice Court, Las Vegas Township, Nevada, indicating that on May 13, 2002, the court granted the State's motion to amend the complaint to misdemeanor reckless driving. The applicant entered a plea of guilty to the amended charge, and he was ordered to pay \$95 in fines and costs.

On appeal, counsel asserts that the applicant's conviction of driving without a license (No. 1 above) "was a traffic offense and not a criminal offense," and that the applicant "received a *civil* fine of \$100 as punishment for the traffic infraction." Counsel further asserts that the applicant was stopped by the police for unknown reasons, the police found a "fake green card" in his car during a search, and he was charged with possessing a false document and also charged with driving without a driver's license; therefore, the two charges arise out of a single incident.

Counsel's assertions are not persuasive. Pursuant to Virginia Code § 46.2-300.9 [driving without license prohibited], a "conviction of a violation of this section shall constitute a Class 2 misdemeanor." As provided in Virginia Code § 18.2-11, punishment for conviction "for Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both." Although the applicant was tried in Traffic Court (No. 1 above), the record indicates that the applicant was convicted of violating Virginia Code § 46.2-300. Despite the fact that the applicant received only a fine as punishment, as defined for immigration purposes in 8 C.F.R. § 244.1, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any.** Furthermore, the fact that the offenses (Nos. 1 and 2 above) arose from a common scheme does not preclude them from being counted as separate offenses. According to the court documents, the applicant was charged with two separate offenses under two separate case numbers, he was tried in two separate courts, he clearly pled guilty to two separate crimes, and the court issued two separate sentences. Therefore, the applicant had been convicted of two separate and distinct misdemeanor offenses.

Accordingly, the applicant is ineligible for TPS due to his three misdemeanor convictions, detailed in Nos. 1, 2, and 3 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.

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.