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FILE: [REDACTED] Office: California Service Center Date: **MAY 29 2007**  
[WAC 05 208 83790]  
[SRC 01 219 55880]

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**DISCUSSION:** The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed an initial TPS application on June 22, 2001, under CIS receipt number SRC 01 219 55880. The director approved that application on May 19, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, under CIS receipt number WAC 05 208 83790, and indicated that he was re-registering for TPS.

The director withdrew the applicant's temporary protected status pursuant to 8 C.F.R. § 244.14(a)(3), 8 C.F.R. § 244.17(c). The director simultaneously denied the re-registration application, due to abandonment, on June 5, 2006, as the applicant failed to submit final court dispositions pertaining to an arrest on October 15, 2004, as requested by the director in an August 26, 2005, notice of intent to withdraw TPS.

As noted by the director in the notice of intent to withdraw, the applicant the applicant on October 15, 2004, the applicant was arrested by the County Police Department, Lawrenceville, Georgia, and charged with:-

- Charge 1 - DUI – ALCOHOL – MISD;
- Charge 2 - DUTY TO STOP AT SCENE OF ACCIDENT HIT & RUN LEAVE SCENE OF ACCIDENT;
- Charge 3 - DUTY TO STOP AT SCENE OF ACCIDENT HIT & RUN LEAVE SCENE OF ACCIDENT;
- Charge 4 - DUI - ALCOHOL – MISD.

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 for such status” or if “the alien fails, without good cause, to re-register ... in a form and manner specified by” the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, “the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status,” or if, “the alien fails without good cause to re-register”.

On appeal, the applicant requests reconsideration of his TPS application, and states that he is submitting the court documents with his appeal. With his appeal, the applicant submits a photocopy of a document from the Recorder's Court of Gwinnett County, Georgia, which indicates that the applicant was found guilty on October 15, 2004, on a nolo contendere plea, and fined on three misdemeanor counts, namely Count 1, Count 2, and Count 3, as shown above.

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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.

As noted above, with his appeal, the applicant submitted a final court disposition which reveals that he was convicted of three misdemeanor charges pertaining to his arrest on October 15, 2004.

The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, 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 deny the application must also be affirmed for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.