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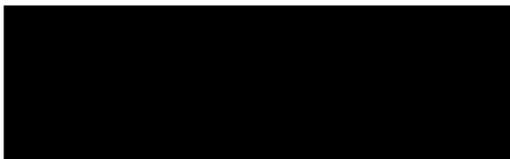
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



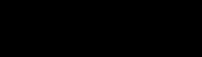
**U.S. Citizenship
and Immigration
Services**

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FILE:



[SRC 02 034 53047]
[WAC 05 209 81059]

Office: CALIFORNIA SERVICE CENTER

Date:

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IN RE:

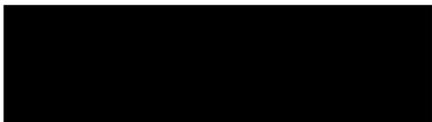
Applicant:



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 California Service Center. 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 Director, California Service Center (CSC), withdrew the applicant's previously granted Temporary Protected Status (TPS) and denied the application for re-registration. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant stated to be a native and 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 director withdrew the applicant's TPS status and denied the re-registration application on because the applicant failed to respond to a notice of intent to withdraw requesting the final court dispositions for two arrests. On motion, the Chief, AAO, affirmed the director's determination because the applicant had not submitted court dispositions for the two arrests cited by the director in his order. The Chief noted that the applicant had been convicted of a third misdemeanor which was driving under the influence by a Judge of the Calhoun County Municipal Court in Georgia on September 26, 2005.

On motion, the applicant's representative states that the applicant did not receive notices that were sent to him at his official addresses of record. His representative acknowledges that charges of driving under the influence in Florida and George are correct and indicates that the applicant complied with the judgments of the court and is remorseful. Counsel submits the final court dispositions for two cases on motion.

The CSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The CSC Director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On February 26, 2001, the applicant was convicted by a Judge in the Hendry County Court in Florida of driving under the influence, a misdemeanor. (Case # [REDACTED])
- (2) On September 26, 2005, the applicant was convicted by a Judge in the Municipal Court of the City of Calhoun, Georgia, of driving under the influence, a misdemeanor. (Case # [REDACTED])
- (3) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on February 11, 2002, he was arrested by the Hendry County Sheriff's Office for contempt of court, a misdemeanor.

On motion, the applicant's representative acknowledges that charges of driving under the influence in Florida and Georgia (Items #1 and #2 above) are correct. The final court disposition for the applicant's arrest for contempt of court (Item #3 above) has not been provided for the record by the applicant.

The applicant is ineligible for TPS due to his record of two 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 withdraw TPS and deny the re-registration application is affirmed.

It is noted that the applicant has provided no further evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO.

ORDER: The appeal is dismissed.