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**U.S. Citizenship
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FILE:

[REDACTED]

Office: California Service Center

Date: NOV 26 2007

[WAC 06 011 70021]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). An appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

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

The director denied the application because the applicant was convicted of two or more misdemeanors committed in the United States.

An appeal from the director's decision was dismissed on May 1, 2007, after the AAO also concluded that the applicant is ineligible for TPS based on his record of three misdemeanor convictions. On May 30, 2007, counsel submitted a motion to reconsider.

On motion to reconsider, counsel states that notwithstanding the "traffic violations that arose from a single scheme of misconduct," the applicant is eligible for TPS. Counsel provides copies of three birth certificates of the applicant's children, as well as copies of the applicant's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, and IRS Form 1040 U.S. Individual Income Tax Return, for 2006.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state 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.

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.
8 C.F.R. § 244.1.

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. See 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. See 8 C.F.R. § 103.5(a)(4).

The record contains court dispositions indicating that on July 22, 1996, the applicant was convicted of driving under the influence, operating a vehicle with no driver's license, and not providing proof of insurance, all three misdemeanor offenses.

Counsel asserts on appeal that since the applicant's three misdemeanor offenses arose in a single occasion, they should be considered a single misdemeanor offense and that he is still eligible for TPS. Counsel's assertion cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses.

The applicant was charged with three separate misdemeanor counts and he pled guilty to three separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of three separate and distinct offenses.

Accordingly, the applicant is not eligible for temporary protected status under Section 212(a)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a) because he has been convicted of two or more misdemeanor offenses committed in the United States.

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 in the motion to reconsider since the applicant has not established that the previous decision of the AAO was based on an incorrect application of law. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed. The previous decision of the AAO, dated May 1, 2007, is affirmed.