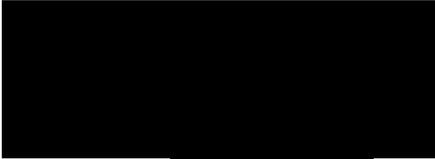


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FILE: [REDACTED]
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Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 2007

IN RE: Applicant: [REDACTED]

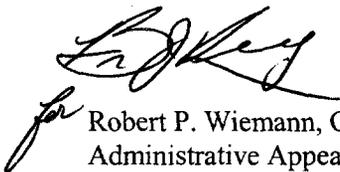
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254

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 Director, California Service Center (CSC), withdrew the approval of the application and denied the applicant's application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

The director withdrew the approval of the application and denied the re-registration application because the applicant had been convicted of two misdemeanors

On appeal, counsel for the applicant concedes that the applicant was convicted of two misdemeanors, but asserts that they arose out of the same incident and should therefore be treated as one single conviction.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

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 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 TPS under this section if the Secretary of the Department of Homeland Security (DHS) 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).

Section 244(c)(2)(B)(i) of the Act states that:

- (B) Aliens ineligible.-An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-
- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States.

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 burden of proof is on the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that on February 4, 2002, the applicant pleaded guilty, in the General Sessions Criminal Court, in Nashville, Tennessee, to the following offenses:

1. One count of driving under the influence (DUI), under § 55-10-401 of the Tennessee Code; and,
2. One count of leaving the scene of an accident involving property damage, under § 55-10-102 of the Tennessee Code.

The applicant was sentenced to 11 months and 29 days incarceration (with all but 7 days suspended) for the DUI conviction and 30 days incarceration (with all 30 days suspended) for leaving the scene of an accident involving property damage.

In Tennessee, a conviction for driving under the influence is a Class A misdemeanor and can result in up to 11 months and 29 days imprisonment. A conviction for leaving the scene of an accident involving property damage is also a Class A misdemeanor and can result in up to 11 months and 29 days imprisonment.

The regulation at 8 C.F.R. § 244.1 defines a misdemeanor as a crime punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served. In the applicant's case, he was convicted of two crimes, each punishable by up to one year imprisonment. For purposes of TPS eligibility, the applicant has been convicted of two misdemeanors, regardless of the fact that they occurred on the same day.

Counsel asserts that the applicant's DUI charge and leaving the scene charge arose out of the same incident, on the same date, and, so should only be counted as one conviction. To support her assertion, counsel cites to § 237(a)(2)(A)(ii) of the Act and to *Matter of Vosganian*, 12 I & N Dec. 1 (BIA 1966).

Counsel erroneously refers to a section of the Act that is not applicable to the applicant in these proceedings. Section 237(a)(2)(A)(ii) states that any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, is deportable. In determining whether the applicant is eligible for TPS, we look to § 244(c)(2)(B)(i) of the Act, not to § 237(a)(2)(A)(ii). These sections are distinguishable in several significant ways. First, § 237(a)(2)(A)(ii), in determining a class of deportable aliens, only applies to aliens who have been admitted to the United States. The applicant in this case entered the United States without inspection and has not been admitted to the United States. He is therefore subject to the grounds of inadmissibility under § 212(a) of the Act, not the grounds of deportability under § 237(a).

Second, in addition to being subject to the grounds of inadmissibility, TPS applicants are also subject to the criminal provisions in § 244(c)(2)(B)(i) of the Act. While § 237(a)(2)(A)(ii) refers specifically to two or more convictions of crimes involving moral turpitude, § 244(c)(2)(B)(i) makes no such reference. An alien is ineligible for TPS for conviction of any two misdemeanors, regardless of whether either one or both is a crime involving moral turpitude.

Third, § 237(a)(2)(A)(ii) specifically includes the language "not arising out of a single scheme of criminal misconduct." Section 244(c)(2)(B)(i) makes no such reference. An alien is ineligible for TPS for conviction of any two misdemeanors, regardless of whether they arise out of a single scheme of criminal misconduct or not. Consequently, the AAO need not address the issue of whether the respondent's two February 4, 2004, convictions constitute two crimes involving moral turpitude, or whether these two crimes arise out of a single scheme of criminal misconduct.

The fact that the applicant was convicted of two separate crimes that occurred on the same day does not mean that the applicant was only convicted of one crime. The dispositions submitted by the applicant indicate that he stands convicted of two separate crimes: DUI and leaving the scene of an accident and is ineligible for TPS under the specific criminal provisions for TPS applicants at § 244(c)(2)(B)(i) of the Act. Consequently, the director's decision to withdraw the approval of the TPS application and deny the re-registration application will be affirmed.

An alien applying for TPS 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 that burden.

ORDER: The appeal is dismissed.