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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 03 256 52841]

Office: VERMONT SERVICE CENTER

Date: APR 15 2008

INRE: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

/V Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC) approved the initial application and subsequently withdrew the approval of the application. The matter is currently before the AAO on appeal. The appeal will be sustained.

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

The director withdrew the approval of the application, finding that the applicant had failed to provide the requested final court disposition for an arrest on January I, 2006.

On appeal the applicant submits the requested disposition and asserts that, since he was only convicted of one misdemeanor, he remains eligible for TPS.

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 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 TPS 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.

The record reflects that on March 15, 2006, in the Los Angeles County Superior Court of California, in Los Angeles, California, the applicant was charged with the following:

1. One count of being under the influence of alcohol or drugs in a vehicle, under California Vehicle Code (VC) § 23152(A);
2. One count of .08% more weight alcohol while driving a vehicle (DWI), under VC § 23152(B); and,
3. One count of willful cruelty to a child, under California Penal Code (PC) § 273A(B); and,
4. One count of willful cruelty to a child, under California Penal Code (PC) § 273A(B)

On appeal, the applicant submits a final court disposition of these charges. The disposition reflects that counts one, three, and four were dismissed and that the judge found the applicant guilty of count two, under VC § 23152(B).

In California, the penalty for a first DWI conviction is imprisonment in the county jail for not less than 96 hours and no more than six months. Therefore, for purposes of determining TPS eligibility, the applicant has been convicted of one misdemeanor.

The record, therefore, shows that the applicant only has one conviction for an offense that is the equivalent of a misdemeanor. Under the regulations, this does not make the applicant ineligible for TPS.

The applicant has submitted sufficient evidence to establish that he has only been convicted of one misdemeanor. He, is therefore not precluded from TPS eligibility pursuant to I.N.A. § 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.