



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

[EAC 07 193 50800, appeal]

APR 24 2008

[WAC 01296 57457]

INRE:

Applicant:

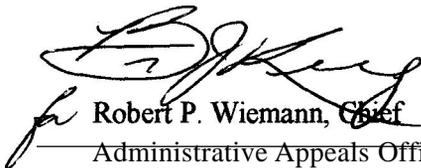
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the **Administrative** Appeals Office on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who was **granted** TPS on January 20, 2004. The director subsequently withdrew the applicant's status and denied the re-registration application on June 4, 2007, when it was determined that the applicant had failed to provide the final court dispositions for his arrests on December 1, 2003 and on December 3, 2003 for the willful infliction of corporal injury to a spouse.

On appeal, the applicant states that he did not receive the director's Notice of Withdrawal (NIW) of TPS dated July 28, 2006 until June 17, 2007, based upon his special request for the letter. The applicant encloses evidence of the final disposition of his arrest on December 1, 2003.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 1, 2003, the applicant was arrested by the Police Department in Lompoc, California, and charged with "INF CORP INJ, SPOUSE/COHAB." The FBI report also shows that on December 3, 2003, the applicant was arrested by the Sheriff's Office in Santa Barbara, California, and again charged with "INF CORP INJ, SPOUSE/COHAB."

On appeal, the applicant acknowledges that he received the director's NIW dated July 28, 2006, which requests that he submit final court dispositions for both his December 1, 2003, and his December 3, 2003

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arrests listed above. The applicant submits an Inmate Booking Record indicating that on December 1, 2003, he entered the Lompoc City Jail based on a felony charge of the willful infliction of corporal injury on a spouse. He submits a second Booking Record indicating that on ember 3, 2003, he entered the Santa Barbara County Jail based on the same charge under Docket No. He also forwards a domestic violence domestic order from a Judge of the Superior Court of California, County of Santa Barbara dated December 12,2003, which states that the applicant has been convicted of PC 273.5, inflicting corporal injury upon a spouse, a misdemeanor, under Case **Number** and that the conviction relates to a violation that occurred on December 1,2003. He was ordered to serve 18 days in the County Jail, given credit for the 18 days that he had served, ordered to pay fines, attend batterer's treatment therapies, and placed on probation for three years. Based upon the record as it now stands, it is determined that the applicant has been convicted of one misdemeanor based upon his December 1,2003 arrest and that the December 3, 2003 arrest shown on his FBI fingerprint results report arose from him being moved from one jail facility to another because of his December 1, 2003 arrest.

The court disposition and booking documentation submitted by the applicant shows that he was convicted of one misdemeanor and he was not sentenced to a term of imprisonment in excess of six months. Therefore, he remains eligible for TPS.

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.

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 met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.