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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:

Office: VERMONT SERVICE CENTER

Date: **AUG 12 2008**

[EAC 07 147 52635, appeal]
[SRC 01 175 55627]

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: 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of El Salvador who was granted TPS on June 5, 2002. The director subsequently withdrew the applicant's status and denied the re-registration application on March 30, 2007, when it was determined that the applicant had failed to submit evidence of the final disposition for his arrests on November 2, 2005 and on November 19, 2005 for driving with an invalid license.

On appeal, the applicant states that he is submitting evidence that he has previously submitted. He forwards an unsigned letter from a Judge of the County Criminal Court in Dallas County, Texas, showing that \$500 deposited for his bail bond for Cause Number [REDACTED] was to be primarily refunded to a person who deposited the sum in his behalf. He also forwards an order from a Judge of the County Court At Law in Rockwall County, Texas dated December 30, 2005 granting him deferred adjudication under cause [REDACTED] after his guilty/no contest plea to the offense of driving while his license was invalid along with a log of the community service hours that he worked from May 27, 2006 through July 1, 2006 under Cause # [REDACTED]. He also submits a two page summary of the cost and fine assessments that he paid through January 26, 2006, to the County Criminal Court #4 in Dallas, Texas under Case Number [REDACTED].

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).

The VSC 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 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 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 November 2, 2005, he was arrested by the Police Department in Rockwall, Texas, and charged with driving with an invalid license. On November 19, 2005, he was arrested by the Police Department in Garland, Texas, and again charged with driving with an invalid license

On appeal, the applicant forwards an unsigned letter from a Judge of the County Criminal Court in Dallas County, Texas, showing that \$500 deposited for his bail bond for Cause Number [REDACTED] was to be primarily refunded to a person who deposited the sum in his behalf. He also submits a two page summary of the cost and fine assessments that he paid through January 26, 2006, to the County Criminal Court #4 in Dallas, Texas under Case Number [REDACTED]. In addition, the applicant also forwards an order from a Judge of the County Court At Law in Rockwall County, Texas dated December 30, 2005 granting him deferred adjudication under cause [REDACTED] after his guilty/no contest plea to the offense of driving while his license was invalid along with a log of the community service hours that he worked from May 27, 2006 through July 1, 2006 under Cause #: [REDACTED]

The applicant has submitted evidence concerning his two arrests for driving with an invalid license. Based on the record, it is determined the applicant is ineligible for TPS due to his record of two misdemeanor convictions. 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 is affirmed.

Although not addressed by the director, the applicant has provided insufficient 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). Consequently, the director's decision to withdraw TPS and deny the re-registration application is affirmed for this additional reason.

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. .

ORDER: The appeal is dismissed.