

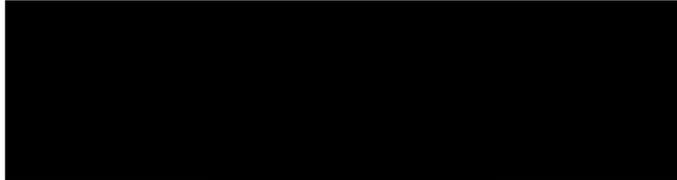
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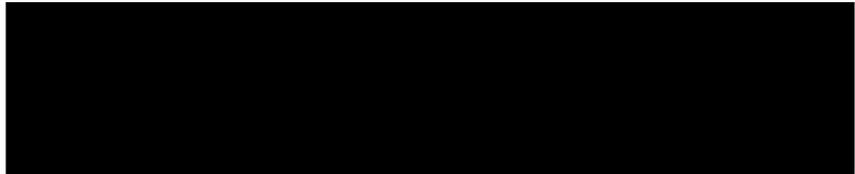
OFFICE: VERMONT SERVICE CENTER

DATE: FEB 21 2008

[SRC 01 184 69898]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew approval of TPS because he found that the applicant had been convicted of at least two misdemeanors.

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).

The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register.¹ However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant had become ineligible for TPS.

On appeal, the applicant states that, although he did things in the past "that were not correct," he has "changed [his] ways."

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

¹ The director stated in his Notice of Withdrawal that he was also denying the applicant's re-registration application. However, the record does not reflect that the applicant has a pending re-registration application.

- (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).

The regulation at 8 C.F.R. § 244.1 defines 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.

Documentation submitted by the applicant reveals the following offenses:

1. On May 19, 2004, the applicant was convicted in the Catawba County, North Carolina District Court of shoplifting/concealment of merchandise, in violation of North Carolina General Statutes section 14-72.1. He was sentenced to ten days confinement and placed on 12 months unsupervised probation.
2. On January 31, 2005, the applicant was convicted in the Iredell County, North Carolina District Court of misdemeanor larceny in violation of North Carolina General Statutes section 14-72(a).

He was sentenced to 45 days confinement, fined \$50, and placed on unsupervised probation for 24 months.

On appeal, the applicant states that he has changed his ways and is working every day to make the best of his stay in the United States.

Nonetheless, the applicant is ineligible for TPS due to his conviction of two misdemeanors in the United States, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS for this reason will be affirmed.

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.