

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

FEB 29 2008

[SRC 01 163 54607]
[WAC 05 127 74323]

IN RE:

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:

[Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), approved the initial application. The director, Vermont Service Center (VSC), subsequently withdrew the approval of the application and denied a re-registration application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director, VSC, found that the applicant had become ineligible for TPS due to two misdemeanor convictions and withdrew the approval of the initial application. The director also denied the re-registration application because approval of the underlying TPS application had been withdrawn.

On appeal, counsel for the applicant asserts that the applicant is sorry for what he did and that his mother will suffer hardship if the applicant is not permitted to remain in the United States to work and help support her.

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 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 the director, TSC, approved the applicant's initial application on May 28, 2002.

On January 21, 2005, the applicant submitted an application for re-registration (WAC 05 127 74323). On October 23, 2006, the director requested that the applicant submit a certified judgment and conviction document for two arrests: 1) on August 25, 2001, by the Houston Police Department, for driving while intoxicated; and, 2) on October 27, 2005, by the Houston Police Department, for driving while intoxicated. In response, the applicant submitted the requested final dispositions.

On August 8, 2007, the director denied the application because the applicant had become ineligible for TPS due to two misdemeanor convictions. The director withdrew the approval of the initial application. The director then denied the re-registration application because the approval of the initial application had been withdrawn.

On appeal, counsel for the applicant asserts the applicant is sorry for what he did and that his mother will suffer hardship if the applicant is not permitted to remain in the United States to work and help support her.

The record reflects the following:

1. On September 10, 2001, the Harris County District Court, in Harris County, Texas, found the applicant guilty of one count of driving while intoxicated (DWI); and,
2. On November 21, 2005, the Harris County District Court, in Harris County, Texas, found the applicant guilty of one count of driving while intoxicated (DWI).

Both DWI convictions were classified as class B misdemeanors. Under Texas law, conviction of a class B misdemeanor can result in a sentence confinement in jail for a term not to exceed 180 days. Therefore, applicant's two DWI convictions are misdemeanors for purposes of determining TPS eligibility. The documentation submitted by the applicant establishes that he has been convicted of two misdemeanors and is therefore ineligible for TPS. There is no hardship exception for two misdemeanor convictions under the Act or the regulations. Accordingly, the director's decision to withdraw the approval of the initial application and deny the re-registration application is 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.