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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

MA

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[EAC 01 165 54121]

**FEB 29 2008**

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, Vermont Service Center (VSC), approved the initial application and subsequently withdrew the approval of the application. The matter 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 found that the applicant had been convicted of two misdemeanors and withdrew the approval of the initial application.

On appeal, the applicant states that he made two mistakes but that he needs a second chance in order to help support his mother and his son.

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.

On May 1, 2007, the director found that the applicant had been convicted of two misdemeanors and withdrew the approval of the initial application.

On appeal, the applicant states that he made two mistakes but that he needs a second chance in order to help support his mother and his son.

The record reflects that the applicant was convicted of the following:

1. One count of driving while intoxicated (DWI), in violation of § 3802(a) of the Pennsylvania Vehicle Code, on November 2, 2004, in the Court of Common Pleas of the 41<sup>st</sup> Judicial District of Pennsylvania, in Juniata County, Pennsylvania; and,
2. One count of simple assault, in violation of title 18 section 2701 of the Pennsylvania Criminal Code, on April 3, 2007, in the Court of Common Pleas of the 41<sup>st</sup> Judicial District of Pennsylvania, in Juniata County, Pennsylvania.

A first conviction for DWI in Pennsylvania is classified as an un-graded misdemeanor and can result in a sentence of 72 hours to six months imprisonment. The applicant's conviction for DWI is a misdemeanor for purposes of determining TPS eligibility.

Under Pennsylvania law, simple assault is classified as a misdemeanor in the second degree which can result in a term of imprisonment, the maximum of which is not more than two years. The applicant was sentenced to 38 days, served. The applicant's conviction for simple assault is a misdemeanor for purposes of determining TPS eligibility.

The applicant's two misdemeanor convictions render him ineligible for TPS. Accordingly the director's decision to withdraw the approval of the initial application and to 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.