



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**  
**identifying data deleted to**  
**prevent clearly unwarranted**  
**invasion of personal privacy**

*MI*

[REDACTED]

FILE: [REDACTED]  
[EAC 01 188 54167]

OFFICE: VERMONT SERVICE CENTER

DATE: JAN 02 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**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

The director withdrew the applicant's TPS because the applicant had failed to properly re-register for TPS after failing to provide the final court disposition for criminal charges listed on his record.

On appeal, the applicant asserts he had to request the documentation to satisfy the directors request for information, and submits several court dispositions in support of his application.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
  - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
  - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
  - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

In this case the director improperly referenced 8 C.F.R. § 244.14(a)(3) in withdrawing the application for failing to properly re-register, and should have referenced 8 C.F.R. § 244.14(a)(1) because the alien was in fact no longer eligible for TPS due to his three misdemeanor convictions in the United States. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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
  - (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).

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 applicant has asserted that he had to obtain the documentation requested by the director, and was unable to do so in the period allotted by the director for a response. The AAO accepts this assertion, as the applicant has provided his court dispositions on appeal. However, the withdrawal of TPS will be affirmed on other grounds, as the record now clearly establishes the applicant is no longer eligible for TPS. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The first issue in this matter is the applicant's multiple misdemeanor convictions in the United States.

The record reveals the following offenses:

- (1) On September 16, 2003, the applicant pled guilty to Loitering, § 240.35, in the First District Court, Islip, New York. Case No. [REDACTED]
- (2) On October 5, 1998, the applicant pled guilty to Operating a Motor Vehicle While Impaired, § VTL 1192.1, in the First District Court, Islip, New York. Case No. [REDACTED]
- (3) On June 8, 1998, the applicant pled guilty to Disorderly Conduct, § 240.20, in the First District Court, Islip, New York. Case No. [REDACTED]
- (4) On June 8, 1998, the applicant pled guilty to Facilitating Aggravated Unlicensed Operation of a Motor Vehicle, VTL 511A.1, in the First District Court, Islip, New York. Case No. [REDACTED]
- (5) On June 19, 2000, the applicant pled guilty to Operating a Motor Vehicle Without a License, VTL § 509.1, in the First District Court, Islip, New York. Case No. [REDACTED]

On appeal, the applicant asserts he had to obtain his documentation and could not respond to the director's request in time.

The applicant will no doubt argue that these convictions are considered violations or infractions under New York state law. Regardless of the classification of these convictions by the state of New York, the convictions listed at 3, 4 and 5 above are punishable by up to 15 days imprisonment, and constitute misdemeanors for the purpose of immigration law.

The applicant is ineligible for TPS as a matter of law due to his record of at least two misdemeanor convictions 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 TPS will be affirmed for this 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.