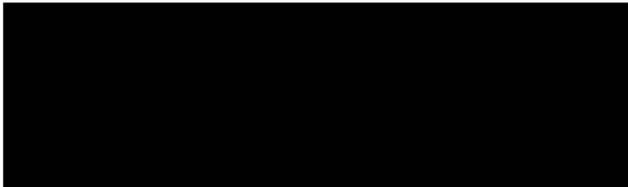


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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE: [REDACTED]
[SRC 01 22670464]

OFFICE: VERMONT SERVICE CENTER

DATE JAN 11 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:



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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter 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 he had been convicted of two misdemeanors in the United States.

On appeal, the applicant acknowledges his driving while intoxicated convictions, and asserted that neither offense resulted in a felony conviction. The applicant "requests that the service acknowledge same."

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
- (t)
 - (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).

"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.

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).

In response to a Notice of Intent to Withdraw TPS issued on December 12, 2006, the applicant submitted the requested court dispositions which revealed the following misdemeanor offenses in Texas:

1. On August 9, 2005, the applicant was charged in the Brazoria County Court of driving while intoxicated. On November 28, 2005, the applicant was convicted of this offense and sentenced to serve three days in jail and ordered to pay a fine. Cause no. [REDACTED].
2. On May 29, 2006, the applicant was charged in the Harris County District Court of driving while intoxicated, 2nd offense. On May 30, 2006, the applicant pled guilty to the charge and was sentenced to serve 30 days in the Harris County jail. The adjudication of guilt was withheld. Cause no. [REDACTED].

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Immigration and Nationality Act.

The court disposition submitted for number two reflects that the applicant pled guilty of the offense and the judge ordered some form of punishment to the charge above. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

On appeal, the applicant requests Citizenship and Immigration Services acknowledge that he has been convicted of two misdemeanors and not two felonies.

It is unclear why the applicant put forth this statement as the director, in his Notice of Decision dated July 20, 2007, clearly indicated that the applicant had been convicted of two misdemeanors. These two misdemeanor convictions render the applicant ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, in accordance with 8 C.F.R. § 244.14, the director's decision to withdraw the applicant's TPS is affirmed.

It is noted that on November 20, 1992, the applicant entered without inspection near Hidalgo Texas. On July 1, 1993, the applicant was ordered deported to El Salvador. On August 12, 1993, a Warrant of Deportation, Form I-205, was issued upon the applicant.

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 from the withdrawal of the TPS application is dismissed.