

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



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

PUBLIC COPY



FILE:



[SRC 02254 54643]
[WAC 05 208 72275]

Office: VERMONT SERVICE CENTER

Date: JAN 15 2008

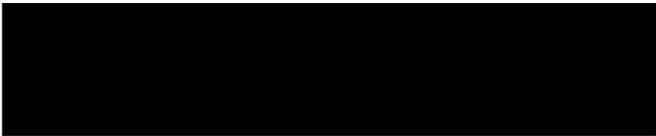
INRE:

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, . f
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the AAO, and the application will be approved. The appeal for the re-registration application will be sustained and the application will be approved.

The applicant claims to be a 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 record reveals that the director determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. 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. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(I) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

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).

"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.

On July 26, 2006, the applicant was requested to submit the final court disposition for his arrest on May 9, 2000, by the Houston Police Department for public lewdness, a violation of Texas Penal Code, section 21.07, a Class A misdemeanor. The notice was sent to counsel at his address of record; however, no response was received prior to the issuance of the director's decision.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on May 15, 2007.

On appeal, the applicant submits documentation from the Houston Police Department reflecting that on May 11, 2000, the applicant was convicted of public lewdness and was sentenced to serve 15 days in the county jail.

The applicant has overcome the single documentary deficiency and the single misdemeanor conviction does not render the applicant ineligible for TPS pursuant to 8 C.F.R. § 244.4(a). Accordingly, the record does not reflect any grounds that would bar the applicant from maintaining his TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved. The applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved.