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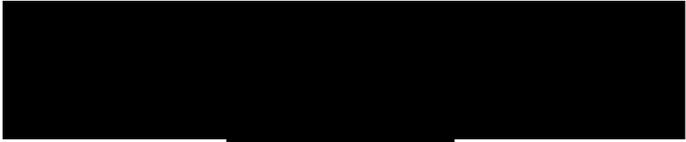
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JAN 30 2008

[WAC 01 203 56522]

IN RE:

Applicant:



APPLICATION:

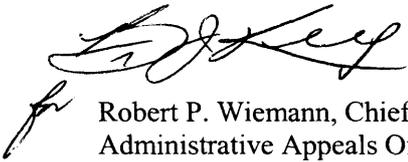
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.



Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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, on March 2, 2004. The director subsequently withdrew the applicant's TPS on January 5, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors.

The director may withdraw the status of an alien granted TPS at any time if it is found 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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

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. 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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a Notice of Intent to Withdraw (ITW) was issued on April 25, 2005, requesting that the applicant submit the final court dispositions of any and all of his arrests, including the arrest listed on the FBI report. In response, the applicant submitted the requested court documents relating to his July 27, 2004 arrest. The director determined that the applicant was convicted of two or more misdemeanors or a felony and withdrew the applicant's TPS on January 5, 2006.

On appeal, counsel asserts that the applicant was not convicted of three misdemeanors, as two of the convictions were for vehicle infractions.

The record indicates that on August 31, 2004, in the Municipal Court of the City of North Las Vegas, County of Clark, Nevada, Case No. [REDACTED], the applicant was convicted of Count 1, open container of alcohol in vehicle, an infraction; Count 2, driving under the influence of alcohol/drugs, a

misdemeanor; and Count 3, failure to decrease speed under certain circumstances. He was ordered to pay a fine in the amount of \$500 as to Count 1; sentence of 180 days was suspended and he was “fined \$1000, victim impact panel, community service 96 hours, drug alcohol school, DRGALC fee, and mandatory traffic school” as to Count 2; and “served sentence in custody” as to Count 3.

The record, in this case, shows that the applicant was convicted of only one misdemeanor offense (Count 2 above). As the applicant is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act, this finding of the director will, therefore, be withdrawn.

Accordingly, the director's decision to withdraw the applicant's temporary residence status will be withdrawn, and the application will be approved.

The burden of proof is upon the applicant to establish 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 met that burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.