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**U.S. Citizenship
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Services**

PUBLIC cOPY



MJ

FILE: [REDACTED]
[WAC 01 172 52670]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 01 2008

INRE: Applicant: [REDACTED]

APPLICAnON: 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 he found the applicant was no longer eligible due to two misdemeanor convictions in the United States.

On appeal, the applicant asserts through counsel that his convictions arise from the same set of circumstances and that it is possible he did not serve enough time to **qualify** each crime as a misdemeanor.

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.

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 record reveals the following offenses:

- (1) On July 6, 2005, the applicant was convicted of Driving With a Blood Alcohol Content Greater than .08% in violation of section 23152(b) VC in the Superior Court of California, County of Los Angeles, and sentenced to 13 days in a Los Angeles County Jail. Case No. [REDACTED]
- (2) On July 6, 2005, the applicant was convicted of Failure to Notify Owner of Accident in violation of section 20002(A)(1) VC in the Superior Court of California, County of Los Angeles, and sentenced to 30 days in a Los Angeles County Jail. Case No. [REDACTED]

On appeal, the applicant asserts that the convictions arise from the same set of facts, and that it's possible he spent less than five days in jail for each offense.

The applicant's assertion that his two misdemeanors arose from a single arrest and, therefore, should be counted as a single misdemeanor offense, cannot be accepted. Convictions on a criminal record are separate and distinct offenses, the fact that the applicant was convicted of breaking more than one law with the same set of circumstances is not relevant. Further, it is not relevant to speculate that the facts surrounding an applicant's criminal record do not render him ineligible. It is the applicant's burden to establish eligibility, this includes articulating a basis of eligibility, and clearly establishing that an applicant is not ineligible due to the criminal convictions revealed by his criminal record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Saffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Likewise, counsel's assertion that the applicant's convictions might not constitute misdemeanors because he was only sentenced to thirteen days in jail is without merit. The regulatory exemption cited by counsel states "any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor." In this case, each of the crimes committed by the applicant is punishable "by imprisonment in the county jail for not exceeding six months." Section 42002 California Vehicle Code. Therefore, the applicant's convictions clearly qualify as misdemeanors.

The applicant is ineligible for TPS due to 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 deny the application for this reason will be affirmed.

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.