



U.S. Citizenship
and Immigration
Services

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[REDACTED]

JUL 21 2008

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 21 2008

[EAC 01 156 54984]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

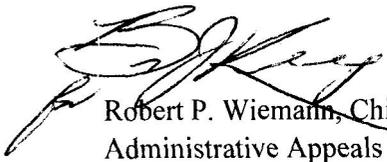
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office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

The applicant is 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 applicant filed a TPS application during the initial registration period on March 22, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 01 156 54984. The Director, Texas Service Center, approved that application on September 24, 2001.

The record reveals the following offenses:

On July 18, 2005, the applicant was arrested by the Falls Church, Virginia Police Department for "Stalking", a misdemeanor, and two counts of "Assault & Battery", both misdemeanors.

The director withdrew temporary protected status because the applicant failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant provides the requested court documentation. Counsel for the applicant claims that the applicant had only been arrested one time and the arrest was for one misdemeanor. According to counsel, the applicant should therefore remain eligible for TPS. However, while the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (the Act), this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court disposition, the applicant was charged with three separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of violations of Section 18.2-57, Assault and Battery and Section 18.2-60.3, Stalking, two separate and distinct misdemeanor offenses.

The applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.