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

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 30 2008

[WAC 01 263 60594]

IN RE:

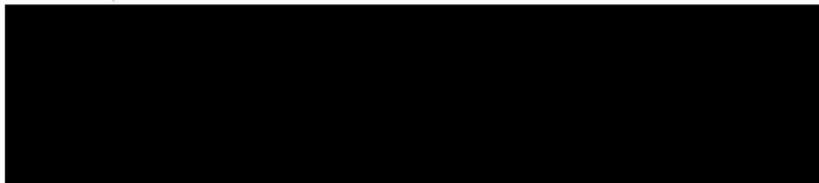
Applicant:



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 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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 an initial TPS application on August 16, 2001, under CIS receipt number WAC 01 263 60594. The director approved that application on January 21, 2003. The director, Vermont Service Center, withdrew the applicant's TPS on August 30, 2007, because the applicant had been convicted of two misdemeanors.

The applicant now files this appeal. On the Form I- 290B, filed on September 28, 2007, the applicant indicated that he was in the process of hiring a criminal defense attorney in order to vacate one or both of the convictions.

As noted by the director in his withdrawal notice, the record reveals the following:

1. On March 25, 2003, the applicant was arrested by Woodland, California Sheriff's Office, for 001 count of DUI Alcohol/Drugs, a misdemeanor.
2. On September 28, 2005, the applicant was arrested by Woodland, California Police for 001 Count of DUI/Alcohol/Drugs W/Priors, a misdemeanor.

On April 26, 2007, the director, Vermont Service Center, issued the applicant a Notice of Intent to Deny (NOID) his TPS re-registration application based on the listed arrests. The applicant was requested to submit evidence of final court dispositions of these and all other arrests. On May 24, 2007, the applicant through his counsel responded to the NOID. The applicant admitted that he was convicted of the two misdemeanors listed above. The applicant submitted a court document relating to the September 28, 2005 arrest and stated that he was in the process of obtaining the court disposition for the March 25, 2003 arrest. The applicant further stated that he was also in the process of retaining a criminal defense attorney to attempt to vacate one or both convictions. The applicant claimed ineffective assistance of counsel with regards to the September 28, 2005, arrest.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further state that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

On appeal, the applicant did not deny that he was convicted of two misdemeanors; however, the applicant stated that he had requested additional time to retain a criminal defense attorney to seek to vacate at least one of the convictions, and that the director wrongfully withdrew his TPS without granting him the additional time requested. The applicant did not submit any additional documentation with his appeal.

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.

As noted above, the applicant admitted to being convicted of two misdemeanor charges. The applicant did not submit any evidence relating to the arrest detailed in No.1 above. Therefore the applicant is ineligible for the TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS must be affirmed for this reason.

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.