



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

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ML

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JON 02 2008

[EAC 08 045 52735, appeal]

[EAC 01 189 50283]

INRE:

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (**TPS**) was withdrawn by the Director, Vennont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted TPS on July 26, 2002. The director subsequently withdrew the applicant's status and denied the re-registration application on October 31, 2007, when it was determined that the applicant had **failed** to submit the final court documents for his arrests for simple assault, breaking and **entering**, and assault and battery.

On **appeal**, counsel states:

**[REDACTED]**, by and through undersigned counsel, hereby respectfully submits this **appeal**, seeking to reverse the denial of his TPS **registration**. The USCIS withdrew \_ s TPS registration on the ground that he **failed** to submit documentation **relating** to his arrests. Through counsel's explanation and instructions, \_ obtained certified dispositions of the arrests that were not previously submitted. Specifically, **attached** you will find the following certified dispositions: March 3, 2002 assauh and battery charge in **Fairfax, Virginia**; March 21, 2004 **assault** and battery in Washington, DC; June 16, 2006 breaking and enter in **Fairfax, VA**, and June 16, 2006 assauh and battery in **Fairfax, VA**. Please note that charges in **Fairfax, Virginia** have all been dismissed. We respectfully request that your office **favorably** reconsider your decision in light of the additional evidence enclosed herewith.

The VSC Director withdrew the applicant's TPS following 8 C.F.R § 244.14(a)(3) which provides for withdrawal of status if the alien **fails** without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially **granted**. The VSC Director should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in **fact** eligible at the time such status was **granted**, or at any time thereafter becomes ineligible.

Seeton 244(c) of the **Act**, and the related regulations at 8 C.F.R § 244.2, provide that an applicant 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

- (£) (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.
- (g) **Has** filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "**felony**" and "misdemeanor" as:

*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 reflects that on November 4, 2004, the applicant was convicted of simple assault and contempt, both misdemeanors, by a Judge of the Superior Court of the District of Columbia. (Case No. DV-948-04).

On appeal, counsel submits documentation establishing that the applicant was not prosecuted for his arrest on March 3, 2002 for assault and battery of a family or household member and his arrest on June 16, 2006 for breaking and entering with the intent to commit assault and battery and for the separate charge of assault on the same day.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions for simple assault and contempt, 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 withdraw TPS and deny the re-registration application is 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.