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U.S. Department of Homeland Security
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Washington, DC 20529



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



FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER **DATE MAR 11 2008**
[WAC 02 10054573]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the Vermont Service Office. 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 Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS). The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking 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 that the applicant had failed to submit requested court documentation relating to his criminal record.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1). The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(I) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, the applicant stated that he sent the requested information but erred in not sending it by certified mail.

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).

The regulation at 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.
8 C.F.R. § 244.1.

Records of the Federal Bureau of Investigation (FBI) reveal that on April 29, 2005, the applicant was arrested by the Santa Ana Sheriff's Office and charged with driving under the influence of alcohol or drugs and driving under the influence alcohol with a blood content of at least .08 percent.

Pursuant to a letter dated July 12, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to the request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on July 25, 2007.

On appeal, the applicant submits the requested documentation and states that his guilty plea to one of the offenses was withdrawn and that he has the right to continue under TPS.

The applicant submits a July 21, 2007, certified documentation from the Superior Court of California, County of Orange, indicating that on June 27, 2005, the applicant was convicted of violations of the California Vehicle Code, sections 23152(a) and 23152(b). Case number _____ — The applicant was sentenced to three years probation. For violating section 23152(a), the applicant was also ordered to pay a fine of \$390 and other court fees, and ordered to attend a Level I First Offender Alcohol Program. On June 30, 2006, the applicant was ordered to serve 10 days in jail for failure to pay court-ordered fine and fees. The confinement was stayed, however, pending completion of the payment of the fines and fees.

The applicant also submits a copy of an August 14, 2007, Minute Order, from the court, granting the applicant's motion to withdraw his guilty plea to the offense of driving under the influence of alcohol or drugs and vacating all punishment awarded from June 27, 2005.

The record does not reflect the basis of the vacation of the applicant's sentence. The Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. The applicant bears the burden of proving that the conviction was not vacated solely for immigration purposes. *In re Chavez-Martinez*, 24 I&N Dec. 272 (BIA 2007). As the applicant has submitted no documentation to indicate that his conviction to driving under the influence of alcohol or drugs was vacated on the merits of his case, he remains convicted, for immigration purposes, of the offense despite the court's vacation of the conviction.

The applicant is ineligible for TPS due to conviction of two misdemeanors as 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 the applicant's TPS 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.