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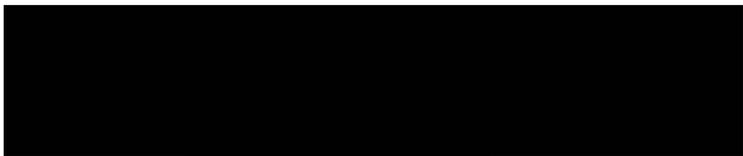
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 25 2008

[EAC 07 211 51786, appeal]
[WAC 01 24357304]

INRE:

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: SELF-REPRESENTED

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was **withdrawn** by the Director, Vermont Service Center, and is now before the **Administrative** Appeals Office on appeal.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 January 29, 2004. The director subsequently withdrew the applicant's status on June 23, 2007, when it was determined that the applicant had been convicted of two misdemeanors in the United States.

On **appeal**, the applicant submits a certified court disposition from the Superior Court of **California** in San Francisco showing his misdemeanor complaint for driving a motor vehicle on a highway with a suspended and revoked driver's license based upon his December 2, 2005 arrest under Case Number [REDACTED] was dismissed. The applicant argues that he is eligible for TPS because he has only been convicted of one misdemeanor.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

- (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 the following offenses:

- (1) On September 17, 2005, the applicant was arrested by the California Highway Patrol and charged with driving under the influence of alcohol or drugs, a misdemeanor, a violation of Vehicle Code Section 23152(a), and driving while having a 0.08 or higher blood alcohol level, a misdemeanor, a violation of Vehicle Code Section 23152(b). On January 24, 2007, the applicant was convicted of both charges by a Judge in the Municipal Court, Traffic

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Division of the State of California, County of Marin, both misdemeanors. (Case Number [REDACTED])

- (2) On December 2, 2002, the applicant was arrested by the San Francisco Police Department and charged with driving a motor vehicle on a highway while knowing that his driver's license had been suspended and revoked a violation of Vehicle Code Section 14601.5(a), a misdemeanor. (Case Number [REDACTED])

On appeal, the applicant submits a certified court disposition from the Superior Court of California in San Francisco showing his misdemeanor complaint for driving a motor vehicle on a highway with a suspended and revoked driver's license based upon his December 2, 2005 arrest under Case Number [REDACTED] was dismissed. (Item # 2 above.)

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed as Item # 1 above. The applicant's statement that he has only been convicted of one misdemeanor does not mitigate the above convictions. 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.