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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [REDACTED]  
[WAC 01 185 52558]

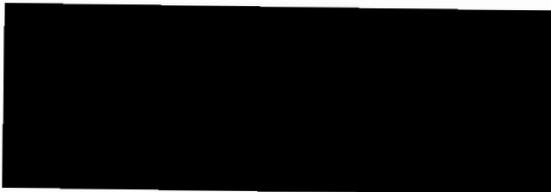
Office: VERMONT SERVICE CENTER

Date: NOV 25 2008

IN RE: Applicant: [REDACTED]

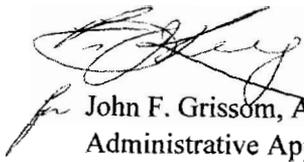
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.*

  
John F. Grissom, Acting 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**DISCUSSION:** The applicant's temporary protected status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 May 16, 2001, under receipt number WAC 01 185 52558. The Director, Texas Service Center, approved that application on April 3, 2002.

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 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 record reveals the following offenses:

- (1) On September 20, 2004, the applicant was arrested by the Miami, Florida Police Department for "DUI", and "DUI W/BAC OF .08 or Higher." The applicant was convicted of these charges, both misdemeanors, on January 17, 2005.

The director determined the applicant had been convicted of two misdemeanors and, therefore, withdrew the applicant's temporary protected status.

On appeal, the applicant states that he was only convicted of one misdemeanor. According to the applicant, one charge is being counted twice. *Black's Law Dictionary*, 353 (7<sup>th</sup> 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 two 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 two separate and distinct misdemeanor offenses, "Driving Under the Influence" and "Driving Under the Influence with BAC of .8 or Higher."

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.