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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: OCT 02 2008
[WAC 02 161 53755]

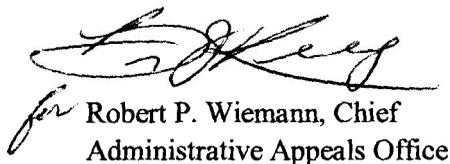
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application was denied by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated be a citizen of El Salvador who was granted Temporary Protected Status (TPS) on July 2, 2003, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On February 25, 2008, the Service Center notified the applicant of its intent to deny his re-registration application and to withdraw his TPS. A criminal history check has revealed that: (1) the applicant was arrested in Huntington Park, California, for Inflicting Corporal Injury Upon Spouse/Cohabitant; and, (2) the applicant was arrested in Los Angeles, California, for: (a) DUI alcohol/drugs; (b) Hit and Run: Property Damage; (c) Failure to Prove Financial Responsibility; and (d) DUI alcohol/0.8 percent. The director afforded the applicant 30 days to submit the final court disposition regarding every charge against him.

On May 14, 2008, the director subsequently withdrew the applicant's Temporary Protected Status and denied the re-registration application after he determined that based on the applicant's response to the notice of intent to withdraw his TPS, the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant states that he disagreed with the director's decision of withdrawing his TPS status. He further asks CIS to give him another chance to receive the TPS benefits. The applicant also submits final court disposition regarding his arrests.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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).

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.

The record of proceeding reflects the following:

1. On December 23, 1990, the applicant was arrested by the Police Department Huntington Park, Agency Case No. [REDACTED], and charged with Count 1 – INFLECT CRPL INJ SP/COHAB. On May 20, 1992, in the Municipal Court of Huntington Park Courthouse Judicial, County of Los Angeles, State of California, the applicant was convicted of Count 1 with imposition of sentenced suspended. The applicant was placed on summary probation for a period of one year.
2. On May 29, 2007, the applicant was arrested by the Los Angeles Unified School District Police Department, and charged with: Count (1) – UND NFLNC ALCHL/DRUG IN VEH, VC MISD – 23152(A); Count (2) – 0.08% MORE WGHT ALCHL DRIVE VEH, VC MISD – 23152(B); Count (3) – HIT AND RUN/PROPERTY DAMAGE, VC MISD – 20002(A); and, Count (4) – NO PROOF OF CAR INSURANCE, VC INF – 16028(A). On June 14, 2007, in the Superior Court of California, County of Los Angeles, in the Metropolitan Courthouse Department 074, the applicant was convicted of Count (2) with imposition of sentence suspended. The applicant was placed on summary probation for a period of 36 months and to pay \$390 in fines. The remaining Counts (1, 3, and 4) were dismissed.

The court dispositions in the record clearly establish that the applicant has been convicted of two misdemeanors. Accordingly, the applicant is ineligible for TPS due to his misdemeanor convictions, 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 Temporary Protected Status 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.