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



U.S. Citizenship
and Immigration
Services

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ME

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: SEP 09 2008

[WAC 05 218 73117]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

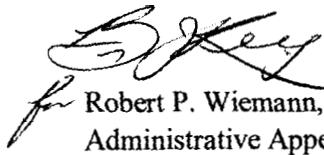
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application was denied by the Director, California Service Center.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

The applicant is stated be a citizen of El Salvador who was granted Temporary Protected Status (TPS) on August 25, 2004, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director subsequently withdrew the applicant's Temporary Protected Status and denied the re-registration application on August 3, 2006, after he determined that the applicant was convicted of a felony or 2 or more misdemeanor offenses committed in the United States.

On appeal, counsel states that the Service decision is wrong in stating that the applicant was convicted of two misdemeanors. Counsel further states that the applicant was convicted of only one misdemeanor; however, he violated the terms of his probation. Counsel indicates that the applicant's charge of violation of probation did not end in a conviction and that a violation of probation is neither a felony nor a misdemeanor; therefore, the applicant's TPS status should be reinstated.

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 September 7, 2000, the applicant was arrested by the Kissimmee Police Department, Agency Case No. [REDACTED], and charged with Count (1) Traffic Offense – DUI Alcohol or Drugs First Conviction, Level – Misdemeanor, 2nd Degree. On September 26, 2000, in the County Court of the Ninth Judicial Circuit in and for Osceola County, Florida, the applicant was convicted of DUI. He was sentenced to revocation of his driving privileges for 6 months, placed on supervised probation for a period of one year, and to pay \$565.50 in fines/court cost.
2. On September 14, 2001, the applicant was charged with Probation Violation by the Osceola County Sheriff's Department by failing to report for scheduled visits on June 25, 2001 and July 10, 2001, never showed up for DUI alcohol treatment, for individual or group sessions and was discharged on May 24, 2001, from the Act Center, due to loss of contact, and by failing to pay \$80 cost of supervision for the months of June and July of 2001. On November 16, 2001, in the County Court Osceola County, the applicant pled guilty to violation of probation and was set for sentencing on March 15, 2002. On March 15, 2002, in the County Court Osceola County, violation of probation charge was dismissed, probation reinstated and terminated.

The final court disposition reveals that the applicant's violation of probation was dismissed, and therefore, he was convicted of only one misdemeanor. The record does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the applicant is not ineligible for TPS under 8 C.F.R. § 244.4. There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn and the appeal will be sustained.

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 met this burden.

ORDER: The appeal is sustained.