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

MI

[Redacted]

FILE:

[Redacted]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 01 2007

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on July 5, 2001. The director subsequently withdrew the applicant's TPS status on August 9, 2006, when it was determined that the applicant had been convicted of two or more misdemeanor offenses. Within the same decision, the director denied the applicant's re-registration application, filed on February 14, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 137 70896, based on his two or more misdemeanor convictions.

The director may withdraw the status of an alien granted TPS at any time if it is found 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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, counsel submits a statement and additional evidence.

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 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 reveals that on July 3, 2000, in the Municipal Court of California, County of Monterey, Salinas Division, Case No. [REDACTED] (arrest date June 24, 2000), the applicant [REDACTED] was arrested for Count 1, "give false information to a peace officer," VC 31, a misdemeanor; Count 2, "driving without a license," [REDACTED], a misdemeanor; Count 3, "fail to provide evidence of financial responsibility," [REDACTED] an infraction; and Count 4, "one-way traffic and off-center lanes," [REDACTED] an infraction. On July 13, 2000, the court noted that the defendant (applicant) "answers to true name of: [REDACTED]" The applicant entered a plea of guilty as to Counts 1, 2, and 4. He was placed on probation for a period of 3 years under the condition that he serve 5 days in the county jail, and was ordered to pay a fine of \$300 as to Count 1; he was placed on probation for a period of 3

years, and was ordered to pay a fine of \$500 as to Count 2; and he was ordered to pay a fine of \$200 as to Count 4. Count 3 was dismissed.

The director determined that the applicant was ineligible for TPS based on his two misdemeanor convictions (Counts 1 and 2 above) and withdrew the application on August 9, 2006.

On appeal, counsel asserts that the alleged two misdemeanors both arose from the same incident, and that the court later reduced [REDACTED] to an infraction on September 26, 2006. That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS under section 244 of the Act. According to the court disposition, the applicant was charged with four separate offenses or counts, he clearly pled guilty to three separate counts, the court found him guilty of three separate offenses or counts, and the court issued three separate sentences. Therefore, the applicant had been convicted of three separate and distinct offenses. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

Counsel subsequently submits an order from the Superior Court of California, County of Monterey, Salinas Division, dated September 26, 2006 (approximately 6 years after the applicant's conviction and after completing his probation), reducing the misdemeanor offense of VC 12500(a), under Case No. MS183331A, to an infraction. The court record, in this case, indicates that the applicant was indicted for the misdemeanor offense of driving without a license, the applicant entered a plea of guilty to the misdemeanor offense, and the court found the applicant guilty of the misdemeanor offense. Additionally, the Board of Immigration Appeals, 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. Therefore, the applicant remains convicted, for immigration purposes, of the misdemeanor offense of driving without a license.

Accordingly, the applicant is ineligible for TPS due to his two 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 TPS and to deny the re-registration application will be affirmed.

The record contains a Warrant of Removal/Deportation, Form I-205, issued under the name of [REDACTED] (file [REDACTED] in San Francisco, California, on February 14, 2001, based on the final order of removal by an Immigration Judge on February 14, 2001.

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.