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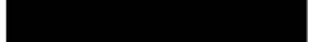


**U.S. Citizenship  
and Immigration  
Services**

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FILE:



[LIN 02 145 51469]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 1 I 2008**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, withdrew approval of the applicant's Temporary Protected Status (TPS). The application 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 TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew approval of the applicant's TPS because he found the applicant had been convicted of at least two misdemeanors.

The director may withdraw the status of an alien granted TPS 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).

On appeal, the applicant asserts that the charges were reduced, that he is completing all requested court action, and that he will complete probation in July 2008.

Section 244(c) of the Act, and the related regulations in 8 C.P.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.P.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).

The regulation at 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.

Section 101(a)(48) of the Act provides that:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
  - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record reveals the following offenses:

1. On February 17, 2005, the applicant was convicted in the Circuit Court of Clay County Missouri of driving while intoxicated, in violation of the Village of Claycomo, Missouri Ordinance number 22-70. The applicant's sentencing was suspended for 24 months. He was placed on unsupervised probation and ordered to complete an alcohol and drug program. Case number \_
2. On March 4, 2005, the applicant appeared in the District Court of Wyandotte County, Kansas for driving under the influence of intoxicating liquor or drugs (DUI) in violation of Kansas Statutes Annotated section 8-1567. The applicant entered into an Alcohol Diversion Agreement, in which he stipulated to the facts surrounding his September 16, 2001, arrest for DUI. Case number \_
3. On July 6, 2006, the applicant was convicted in the 7<sup>th</sup> Judicial Circuit of Missouri of unlawful use of a weapon/possessing an unloaded firearm while intoxicated, a class A misdemeanor. Sentencing was suspended and the applicant was placed on two years supervised probation. Case number

On appeal, the applicant asserts that the charges were reduced to misdemeanors, and that he is completing the terms of his probation.

Documentation submitted by the applicant indicates that on July 6, 2006, the court permitted the prosecution to amend the felony complaint information against the applicant to the charge as indicated in number three above. The applicant also submits a copy of the Alcohol Diversion Agreement dated March 4, 2005. The record does not contain documentation verifying successful completion of the program. Additionally, as the applicant admitted sufficient facts to warrant a finding of guilt, this offense is a misdemeanor conviction for immigration purposes.

The applicant is ineligible for TPS due to his conviction of at least two misdemeanors, as 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 for this reason 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.