

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

M

SEP 25 2009

FILE:

[REDACTED]
[WAC 01 262 54383]

Office: VERMONT SERVICE CENTER

Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a 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 August 20, 2001 under receipt number WAC 01 262 54383. The Director, California Service Center, approved that application on April 28, 2003.

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).

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. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

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 December 2, 2004, the applicant was arrested by the Los Angeles, California Police Department for "Und Inflnce Alchl/Drug in Veh", "Hit and Run Property Damage", and, "Report Crime Fraudulently."

- (2) On February 18, 2007, the applicant was arrested by the Los Angeles, California Police Department for "Bat, Spouse /Ex Sp/Date/Etc."

Pursuant to a letter dated February 26, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant provided the requested documentation for the December 2, 2004 arrest. According to the final court disposition, on January 21, 2005, the applicant was found guilty of "Und Inflnce Alchl/Drug in Veh", a misdemeanor, and, pled *Nolo Contendere* and was found guilty of "Report Crime Fraudulently", a misdemeanor.

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant requests that the director's decision be reconsidered. According to the applicant no charges were filed for the February 18, 2007 arrest. The applicant provides documentation in support of this claim. The applicant also states that he does not see why he was convicted of two

misdemeanors for the same situation that occurred on December 2, 2004. However, while the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (the Act), this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 353 (7th 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. Consequently, the director's decision will be affirmed.

The applicant is ineligible for TPS because of his misdemeanor convictions.

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.