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

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U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED]  
[WAC 05 271 70205]

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 25 2009

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 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 application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office 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 director determined that the applicant had been convicted of two misdemeanors in the United States and, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant had disclosed his criminal background and was granted TPS previously, therefore, his eligibility under re-registration is not the same as it is for the initial qualification of TPS.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

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).

"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.

The FBI report dated May 10, 2006 reveals the following offenses:

- (1) On September 19, 1998, the Chicago, Illinois Police Department arrested the applicant for "DUI 10/100", and "DUI of Alcohol."
- (2) On August 10, 2001, the Wheeling, Illinois Police Department arrested the applicant for "Violation Bail Bond."

Pursuant to a Notice of Intent to Deny dated January 16, 2007, the applicant was requested to submit the final court disposition for all arrests including the arrests detailed above. The applicant provided the requested court documents. According to the submitted dispositions:

- On September 27, 1992, the applicant was arrested and subsequently charged with driving while license is suspended, a violation of ILCS 6-303. On October 30, 1992, the applicant was convicted of this misdemeanor offense. On December 18, 1994, the applicant was charged with driving a vehicle while under the influence of alcohol, a violation of ILCS 501(a)(2). On March 14, 1995, the applicant pled guilty and was convicted of this misdemeanor offense. The applicant was ordered to pay a fine and sentenced to two years supervision.
- On November 14, 1995, the applicant was charged with driving while license is suspended, a violation of ILCS 6-303. On February 20, 1996, the applicant was convicted of this misdemeanor offense.
- On August 18, 1997, the applicant pled guilty and was convicted of "theft/lost/mislaid pro," a violation of ILCS 5/16-2, and "false personation; use of title solicitation; certain entities," a violation of ILCS 5/17-2, both misdemeanors.
- On November 10, 1998, the applicant was charged with driving while license is suspended, a violation of ILCS 6-303. On April 14, 1999, the applicant was convicted of his misdemeanor offense. On December 16, 1998, the applicant was charged with driving while license is suspended, a violation of ILCS 6-303. On August 14, 1999, the applicant was convicted of his misdemeanor offense.
- On January 28, 1999, the judge entered *nolle prosequi* for number one above.
- On March 21, 2001, the applicant was charged with driving while license is suspended, a violation of ILCS 6-303. On January 30, 2002, the applicant was convicted of this misdemeanor offense.

On appeal, counsel claims that the applicant was held to a higher standard of proof for the filing and adjudication to re-register for TPS. According to counsel, the applicant had already disclosed his criminal background and was granted TPS previously. Therefore, his eligibility for re-registration is not the same as it is for initial qualification of TPS. Although the applicant had previously submitted applications for TPS, the applicant incorrectly attributes the granting of employment authorization as approval of his TPS applications. Sections 244(c)(3)(A) and (C) of the Act provide that the Secretary of Homeland Security (Secretary) shall withdraw TPS granted to an alien if “the alien was not in fact eligible for such status” or if “the alien fails, without good cause to [re-register...in a form and manner specified by” the Secretary. Title 8 of the Code of Federal Regulations (CFR), part 244.14(a)(1) and (3) further state that the director may withdraw the status of an alien granted TPS if “the alien was not in fact eligible at the time such status was granted, or, at any time thereafter ineligible for such status” or if “the alien fails without good cause to [re-]register.

Counsel also contends that the state dispositions advised the applicant that the grant of supervision is allowed so that the defendant will not have a criminal record and the applicant acted under what he believed to be conditions that would not result in any adjudication of his criminal guilt. However, the term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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. Section 101(a)(48)(A) of the Act.

The court dispositions submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

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

Beyond the decision of the director, the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.