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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

[EAC 01 200 56826]

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.

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and 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 withdrew the applicant's TPS on February 27, 2003, when it was determined that the applicant: (1) had been convicted of two or more misdemeanors committed in the United States; and (2) had failed to re-register for TPS by the required deadline.

On appeal, counsel submits a statement and additional evidence. He states that he needs 60 days in which to submit a brief and/or evidence. To date, the file contains no further response from the applicant. Therefore, the record shall be considered complete.

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).

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The record reflects the following:

1. On September 8, 1993, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED], the applicant was convicted of "disorderly conduct (urinating in public)," in violation of § 13-1-30(a)(3), Code of Virginia. He was fined \$75.

2. On October 12, 1994, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$41.
3. On September 24, 1996, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "drinking in public," § 4.1-308, a Class 4 misdemeanor. He was ordered to pay the total of \$114 in fines and costs.
4. On November 12, 1996, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$54.
5. On December 18, 1996, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was ordered to pay the total of \$89 in fines and costs.
6. On May 1, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$54.
7. On May 9, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "drinking in public," § 4.1-308(a), a Class 4 misdemeanor. He was fined \$54.
8. On May 22, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$54.
9. On June 13, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "open container of alcohol," § 13-1-5.1, a Class 4 misdemeanor. He was fined \$54.
10. On June 23, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$54.
11. On October 3, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of (1) trespassing, § 18.2-119, a class 1 misdemeanor; and (2) failure to appear (Capias), 19.2-128, a class 1 misdemeanor. He was sentenced to serve 10 days in jail, and ordered to pay the total of \$250 in fines and costs.
12. On October 16, 1997, in the General District Court, City of Alexandria, Virginia, Case No. [REDACTED] the applicant was convicted of "appear in public and was drunk," § 13-1-5, a Class 4 misdemeanor. He was fined \$55.

On appeal, counsel submits court records indicating that 3 of the applicant's offenses for "drunk in public" were dismissed. Counsel further states that the applicant's convictions of "drunk in public," according to the Code of Virginia Section 4.1-308, is a class 4 misdemeanor, punishable by a fine, with no provision for imprisonment. He

asserts that the convictions, therefore, are not considered misdemeanors and the applicant had not been convicted of two or more misdemeanors as defined in 8 C.F.R. § 244.1.

Pursuant to § 18.2-11 of the Virginia Code, punishment for Class 4 misdemeanor is a fine of not more than \$250; therefore, counsel is correct in his assertion, and the convictions in Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, and 12 above are not considered misdemeanors for immigration purposes. The classification of the offense in No. 1 above is not clear. However, it remains that the applicant has been convicted of the misdemeanor offenses detailed in No. 11 above. The penalty for each of these offenses can carry a possible sentence of imprisonment for up to 12 months.

Therefore, the applicant is ineligible for TPS due to his record of at least two misdemeanor convictions (No 11 above). Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The director's decision to withdraw the applicant's temporary protective status on this ground will be affirmed.

The next issue in this proceeding is whether the applicant had re-registered for temporary protected status.

The director noted that the applicant had failed to re-register for TPS by the required deadline of November 12, 2002, and that as of the date of his notice, February 27, 2003, Citizenship and Immigration Services (CIS) had not received an application submitted for the purpose of re-registering for TPS. The director, therefore, withdrew the applicant's temporary protected status.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The record reflects that the applicant filed his TPS application on May 21, 2001, during the initial registration period. The applicant was granted TPS status on May 17, 2002.

An alien who has been granted Temporary Protected Status must register annually with the district office or service center having jurisdiction over the alien's place of residence. 8 C.F.R. § 244.17(a).

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Immigration and Nationality Act if 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. 8 C.F.R. § 244.17(c).

On appeal, counsel asserts that the applicant failed to re-register because he meets one of the four conditions described in "a through d" of 8 C.F.R. § 244.2(f)(2). He states that the applicant has an application for cancellation of removal pending before the Board of Immigration Appeals (BIA) during the registration period, that the Immigration Judge denied this application, and that a timely appeal was filed before the BIA.

Counsel's assertion, however, is without merit. This regulation applies to qualification for late registration after the initial registration period from January 5, 1999 through August 20, 1999, had closed. 8 C.F.R. § 244.2(f)(2) does not apply to re-registration. The provisions of 8 C.F.R. § 244.17(a) require that aliens must re-register annually. The applicant, in this case, has failed to do so.

Consequently, the director's decision to withdraw the applicant's temporary protected status based on his failure to re-register will also be affirmed.

The record shows that the applicant was ordered removed from the United States to El Salvador on February 26, 2003 (File No. [REDACTED]). The applicant appealed the decision of the Immigration Judge to the Board of Immigration Appeals (BIA) on March 20, 2003. On March 23, 2005, the BIA dismissed the appeal.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.