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



U.S. Citizenship
and Immigration
Services

MM

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

NOV 29 2005

[REDACTED]
[EAC 02 001 52600]

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 office that originally decided your case. Any further inquiry must be made to that office.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The matter 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 was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on March 31, 2003. The director subsequently withdrew the applicant's TPS on July 29, 2003, when it was determined that the applicant had been convicted of two misdemeanors committed in the United States.

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).

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.

On appeal, the applicant acknowledges that he cannot prove that he is innocent of the misdemeanor offenses and argues that the convictions should be excused because they only involved a small car accident when he was returning from work.

The record reveals the following offenses:

- (1) On June 19, 2003, in the Traffic Court, Fairfax City, Virginia, Case No. [REDACTED] (arrest date May 13, 2003), the applicant was convicted of leaving the scene of an accident (property damage), Virginia Code 46.2-894, a Class 1 misdemeanor. He was sentenced to serve 30 days in prison (28 days suspended) and ordered to pay \$294 in fines and costs.
- (2) On June 19, 2003, in the Traffic Court, Fairfax City, Virginia, Case No. [REDACTED] (arrest date May 13, 2003), the applicant was convicted of driving a motor vehicle on a highway without having obtained a driver's license, Virginia Code 46.2-300, a Class 2 misdemeanor. He was sentenced to serve 30 days in prison (30 days suspended) and ordered to pay \$202 in fines and costs.

The applicant is ineligible for TPS due to his two misdemeanor convictions, 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 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.