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**U.S. Citizenship
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Services**

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DEC 29 2006

FILE:

[REDACTED]
[WAC 01 198 52855]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 claims to be a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) on August 27, 2003.

On March 20, 2006, the director withdrew the applicant's Temporary Protected Status because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits additional evidence.

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 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.F.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).

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.

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 applicant’s 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On November 15, 1997, the applicant was arrested in Oakland, California, and charged with failing to present identification, a first-degree misdemeanor.
2. On July 26, 1998, the applicant was arrested in Oakland, California, under the name [REDACTED] and charged with driving under the influence of alcohol with a minor in the vehicle.
3. On November 8, 1998, the applicant was arrested in Oakland, California, under the name [REDACTED] and charged with one count of petty theft, a misdemeanor.

4. On March 9, 2001, the applicant was arrested in Oakland, California, under the name [REDACTED] and charged with disorderly conduct under the influence of toluene.
5. On December 14, 2001, the applicant was arrested in Oakland, California, under the name [REDACTED] and charged with one count of disorderly conduct under the influence of toluene.
6. On June 13, 2003, the applicant was arrested in Oakland, California, and charged with: one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor; one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; and, one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor.

On September 1, 2005, the applicant was requested to provide the final court dispositions of the arrests detailed above. The applicant, in response, submitted the following:

- A. a document from the Alameda County Sheriff's Office indicating that the applicant pled "nolo contendere" on August 5, 2003, to one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. This document relates to the offense detailed in No. 6 above. (Case Number [REDACTED])
- B. a document from the Alameda County Sheriff's Office indicating that the applicant pled "nolo Contendere" on May 9, 2000, to one count of disorderly conduct in a public place under the influence of alcohol in violation of section 647(f) PC, a misdemeanor. This document relates to the offense detailed in No. 3 above. The document further indicates that no charges were filed against the applicant in connection with the arrest detailed in No. 4 above. (Case Number [REDACTED])

The director withdrew the applicant's Temporary Protected Status on March 20, 2006, because she found that the applicant had failed to submit the final court dispositions of all of the offenses detailed above.

On appeal, the applicant submits photocopies of documents previously submitted and a photocopy of the applicant's California Department of Motor Vehicles record reflecting the applicant's arrest detailed in No. 6 above.

The applicant has not provided the final court dispositions of the offenses detailed in Nos. 1, 2, 3, and 5 above. The applicant has become ineligible for TPS due to his failure to provide the final court dispositions of the offenses detailed above. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status for this reason will be affirmed.

Furthermore, the applicant has submitted evidence establishing that he has been convicted of at least two misdemeanor offenses. The applicant is also ineligible for TPS due to his record of at least two misdemeanor offenses, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Finally, the applicant has not submitted sufficient evidence to establish his identity and nationality. 8 C.F.R. § 244.9(a)(1).

Therefore, the approval of the applicant's Temporary Protected Status also must be withdrawn for these reasons.

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.