

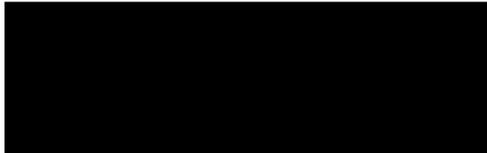


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

MI



FILE:

[WAC 05 117 74345]
[EAC 01 172 53795]

OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 24 2007

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and his re-registration application was denied by the Director, California Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) on May 15, 2002. The director subsequently withdrew the applicant's Temporary Protected Status and denied the re-registration application on August 17, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors.

On appeal, counsel states that the applicant pled not guilty to the November 25, 2002 DUI charge, which was later nulled by the government. Counsel further states that the applicant has only been convicted of one misdemeanor and is therefore eligible for TPS.

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.

The record reveals the following offenses:

- On September 29, 2002, the applicant was arrested and charged with two counts of driving under the influence (DUI) and one count of improper turn. (Case number [REDACTED]) On November 25, 2002, at the Circuit Court in Lake County, Illinois, the applicant entered into a negotiated plea of guilty (deferred judgment) to one count of

DUI, and was sentenced to a fine of \$750.00 and a period of supervised probation (D.U.I. project program).

- On June 29, 2004, at the Circuit Court in Lake County, Illinois, the applicant pled guilty to one count of DUI. (Case number [REDACTED] The applicant was sentenced to a fine of \$600.00 and twelve months supervised probation, 60 days in the county jail with 58 days stayed.

On appeal, counsel states that the November 25, 2002 DUI negotiated plea should not be considered a misdemeanor conviction because it was a deferred judgment, the applicant did not plea guilty, and that the charge was later nolleed by the government.

Contrary to counsel's assertions, the record of proceeding reveals that the applicant has been convicted of two misdemeanor offenses committed in the United States. Although the Illinois court decided to continue the applicant's DUI case for possible dismissal upon completion of the terms of probation, the court order confirms the applicant pled guilty and the applicant's liberty was restrained in that he was placed on court supervision to enter and complete programs as directed by the probation department. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law.

Under section 101(a)(48) of the Act:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant has been convicted of two misdemeanor offenses, and therefore, the director's decisions to withdraw the approval of the TPS application and to deny the re-registration application will be affirmed.

The applicant is ineligible for TPS due to his record of at least two or more misdemeanor convictions as detailed above. 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 application for this reason will be affirmed. The director's decision to deny the applicant's TPS re-registration application will also 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.