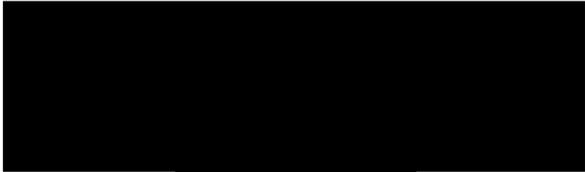


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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
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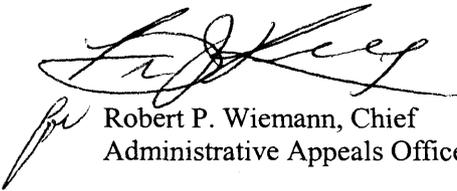
IN RE: Applicant: [REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on January 21, 2004. The director subsequently withdrew the applicant's TPS on October 5, 2005, when it was determined that the applicant had been convicted of two misdemeanor offenses.

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).

A review of the record indicates that on October 5, 2005, the applicant was issued a notice of intent to withdraw TPS status, and was given until November 4, 2005, to submit additional evidence. However, on the same date, October 5, 2005, the director withdrew the applicant's TPS after determining that the applicant had responded to the director's request dated June 16, 2005, to submit the final court dispositions of his arrests listed in the Federal Bureau of Investigation fingerprint results report. A remand of this case to the director based on a premature denial of the initial application would not overcome the director's decision as the record shows that the applicant had, indeed, furnished final court dispositions of his arrests establishing that he was convicted of two misdemeanor offenses committed in the United States.

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.

The record reveals the following offenses:

- (1) On March 28, 2005, in the Superior Court of California, County of San Bernardino, Case No. [REDACTED] (arrest date January 13, 2005), the applicant was convicted of "obstructs/resists/public officer," 148(a)(1) PC, a misdemeanor. He was sentenced to serve 3 days in the county jail.

(2) On June 16, 2005, in the Superior Court of California, County of San Bernardino, Case No. [REDACTED] (arrest date May 27, 2005), the applicant was indicted for Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or higher, 23152(b) VC, a misdemeanor. On August 11, 2005, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, and ordered to pay \$1548 in fines and costs. Count 1 was dismissed.

On appeal, the applicant states that he needs work authorization because he has bills to pay. He asserts that he is "not guilty" and that he has a court hearing on November 8. The applicant submits a copy of a court hearing notification for Pretrial on Case No. [REDACTED] on November 8, 2005. The record does not list the offense committed by the applicant that was heard on November 8, 2005, nor did the applicant furnish the court documents relating to that hearing and/or the final court disposition of that offense.

The applicant is ineligible for TPS due to his record of at least 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.