



U.S. Citizenship
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[Redacted]

FILE: [Redacted]
[SRC 01 277 55971]
[WAC 05 232 70325]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 27 2007

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.


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 November 19, 2002. The director subsequently withdrew the applicant's TPS status on September 29, 2006, when it was determined that the applicant had been convicted of a felony or two or more misdemeanor offenses. Within the same decision, the director denied the applicant's re-registration application, filed on May 20, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 232 70325, because the applicant was ineligible for TPS based on his convictions.

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).

On appeal, the applicant states that he has made wrong decisions regarding his driving, but that he has learned from his mistakes. He requests reconsideration because he has two United States citizen children.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a notice of intent to withdraw TPS was subsequently issued on February 16, 2006, requesting that the applicant submit the final court dispositions of all of his arrests, including the arrests listed on the FBI report. In response, the applicant submitted the following:

- (1) On May 26, 2000, in Orange County, Florida, the applicant was arrested for "driving under the influence," Florida Statute (FS) 316.193, a misdemeanor. On September 19, 2000, in the County

Court of Orange County, Florida, Case No. [REDACTED] the charge was amended to "reckless driving," FS 316.192, a misdemeanor, and the applicant was convicted of the amended charge. He was placed on probation for a period of 363 days, ordered to serve 50 hours of community service, to attend and complete "DUI Counter Attack School," and pay \$443.50 in fines and costs.

- (2) On March 17, 2003, in the County Court of Orange County, Florida, Case No. [REDACTED] (arrest date December 29, 2002), the applicant was convicted of "driving without a valid license," FS 322.03, a misdemeanor. He was ordered to pay \$213.50 in fines and costs.
- (3) The FBI report indicates that on December 30, 2002, in Orange County, Florida, the applicant was arrested for "failure to appear-driving while license suspended Osceola County, warrant." The final disposition of this arrest is not contained in the record."
- (4) On July 20, 2004, in Kissimmee, Florida, the applicant was arrested for "driving while license suspended or revoked [DWLSR]," FS 322.34(2), a misdemeanor. During a hearing held in the County Court of Osceola County, 2 Courthouse Sq., Kissimmee, Florida, on August 6, 2004, Case No. [REDACTED], no plea was entered by the applicant. The court withheld adjudication of guilt and ordered that the applicant pay \$236.25 in fines and costs.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(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.

Although the records in No. (4) above indicate that the court ordered some form of punishment or penalty (\$235.25 in files and costs), no plea was entered by the applicant, nor did the court find the applicant guilty of the offense of DWLSR. Therefore, the applicant was not convicted of DWLSR (No. 4 above), within the meaning of section 101(a)(48)(A) of the Act.

However, the applicant was convicted of at least two misdemeanors (Nos. 1 and 2 above); therefore, he is ineligible for TPS. 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 and to deny the re-registration application 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.