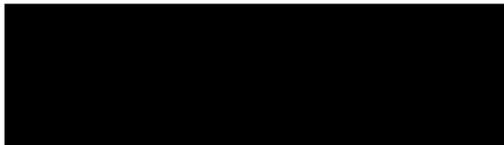




U.S. Citizenship
and Immigration
Services

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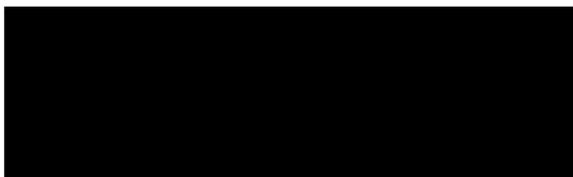
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAR 06 2007
[EAC 02 115 51156]

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:



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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The application 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 is seeking Temporary Protected Status under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because he found that the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, counsel argues that the applicant has only been convicted of one misdemeanor and submits a copy of the final court disposition in one criminal case.

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). If a decision to withdraw Temporary Protected status is entered by the AAO, the AAO shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in removal proceedings, if the alien is then removable. 8 C.F.R. § 244.14(c).

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 record reveals the following offenses:

- (1) On September 20, 2004, the applicant was convicted in the Loudoun County General District Court of operating a motor vehicle while impaired by drugs and/or alcohol.
- (2) On September 16, 2005, the applicant was convicted in District Court of Maryland for Montgomery County of disorderly conduct.

The applicant's initial TPS application had been approved on or about September 2, 2002. The director determined that the record of proceedings showed that the applicant had been convicted of two or more misdemeanors committed in the United States, and withdrew the TPS application on November 17, 2005.

On appeal, counsel states that the evidence demonstrates that the applicant has only been convicted of one misdemeanor and therefore, qualifies for TPS status. To substantiate his claim, counsel submits a copy of the court disposition in the operating a motor vehicle under the influence case. Counsel further states that the

applicant was not sentenced to five or more days of imprisonment concerning his disorderly conduct conviction.

Contrary to counsel's assertions, the record of proceedings reveals that the applicant has been convicted of at least two misdemeanor offenses in the United States.

The definition cited by counsel states that an offense "punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor." The applicant's disorderly conduct charge carried a maximum possible sentence of 60 days and/or a \$500.00 fine. Hence, it is considered by the AAO as a misdemeanor offense as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of at least two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of at least two misdemeanor offenses, and therefore, 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.