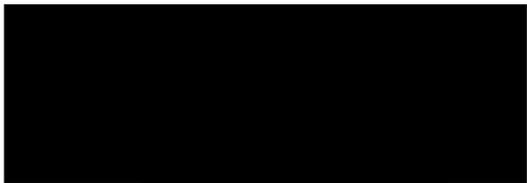




U.S. Citizenship
and Immigration
Services

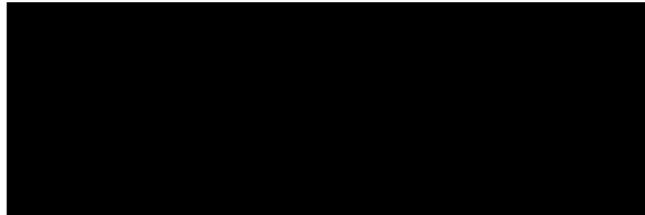
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAR 26 2007
[EAC 02 161 50548]
[EAC 05 148 70209]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on February 10, 2003. The director subsequently withdrew the applicant's TPS status on May 19, 2006, because the applicant had failed to submit the final court dispositions of all of his arrests as had been requested in the Notice of Intent to Withdraw (ITW) dated February 7, 2006. Within the same decision, the director denied the applicant's re-registration application, filed on February 25, 2005, under Citizenship and Immigration Services (CIS) receipt number EAC 05 148 70209, because the underlying TPS was withdrawn based on the applicant's failure to timely and/or adequately respond to the ITW.

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, counsel asserts that the director erroneously denied the applicant's TPS and requests that the entire record be reviewed and to consider granting the applicant TPS benefits.

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 was issued on February 7, 2006, requesting that the applicant submit the final court dispositions of his arrests listed below. Because the applicant, in response, failed to submit the court dispositions of all of his arrests, the director withdrew the applicant's TPS status on May 19, 2006:

- (1) On September 15, 1996, in Yaphank, New York, the applicant (name used: [REDACTED]) was arrested for driving while intoxicated. The FBI report indicates that the applicant was convicted of this offense; however, the actual final court disposition is not contained in the record.

- (1) On September 15, 1996, in Yaphank, New York, the applicant (name used: [REDACTED]) was arrested for driving while intoxicated. The FBI report indicates that the applicant was convicted of this offense; however, the actual final court disposition is not contained in the record.
- (2) On January 1, 2003, in Yaphank, New York, the applicant (name used: [REDACTED]) was arrested for Count 1, "ACT IN MANNER INJUR CHILD UNDER 17;" and Count 2, driving while ability impaired by alcohol. The FBI report indicates that the applicant was convicted of both Counts 1 and 2; however, the actual final court disposition is not contained in the record.
- (3) On June 19, 2005, in Yaphank, New York, the applicant was arrested for driving while intoxicated. In response to the ITW, the applicant submitted the court disposition of this arrest indicating that on October 19, 2005, in the District Court of the County of Suffolk, First District Court Central Islip, New York, Docket No. [REDACTED] the applicant was convicted of operating a motor vehicle under the influence of drug or alcohol, VTL 1192.3, a misdemeanor.

The applicant has failed to submit the final court dispositions of all of his arrests, including arrests detailed in 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 will be affirmed.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.