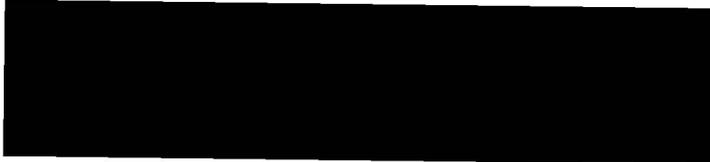


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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



Handwritten initials

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAY 21 2007**
[WAC 01 223 56864]
[WAC 05 137 77767]

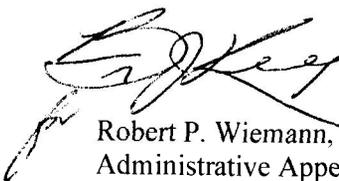
IN RE: Applicant: [REDACTED]

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.


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 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 June 10, 2004. The director subsequently withdrew the applicant's TPS status on January 30, 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 February 4, 2005, under receipt number WAC 05 137 77767, also because the applicant had been convicted of a felony or two or more 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).

On appeal, counsel submits a statement and additional evidence.

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, the applicant was requested, in a Notice of Intent to Withdraw dated September 30, 2005, to submit the final court dispositions of all of his arrests, including the arrests listed on the FBI report.

In response, the applicant submitted court records indicating that on December 22, 2004, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] (arrest date October 24, 2004), the applicant was convicted of Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. He was placed on probation for a period of 3 years, ordered to pay \$677 in fines and costs, to

attend and complete a 3-month Level 1 First Offender Alcohol Program, to attend and complete Mother's Against Drunk Driving (MADD) Victim's Impact Panel, and his driver's license was restricted for 90 days.

The director denied the TPS re-registration application and also withdrew the applicant's TPS status on June 30, 2006, after determining that the applicant was ineligible for TPS based on the applicant's two misdemeanor convictions.

On appeal, counsel states that the applicant pled guilty to both counts [23152(a) and 23152(b) VC], he was granted probation, he has fulfilled all conditions of his probation, and has since not been arrested, charged or convicted with any crime. He asserts that 23152(b) VC should not be considered a misdemeanor conviction because the charge under which the applicant was convicted is not punishable by imprisonment for any term. He further asserts that the statutory language of 23152(b) VC does not authorize the imprisonment of any individual who violates that section for any term, and thus it should not be treated as a misdemeanor conviction.

Counsel's assertions on appeal are without merit. The fact that the applicant had fulfilled all conditions of his probation is not evidence that the convictions had been dismissed. Further, pursuant to § 23160 VC, if any person is convicted of a first violation of § 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than **six months** and by a fine of not less than \$390 nor more than \$1,000.

The records clearly indicate that the applicant was convicted by the Superior Court of the misdemeanor offense of 23152(a) VC and the misdemeanor offense of 23152(b) VC, both offenses punishable by imprisonment in the county jail not to exceed six months. 8 C.F.R. § 244.1 defines "misdemeanor" to mean a crime committed in the United States punishable by imprisonment for a term of one year or less, **regardless of the term such alien actually served, if any**. Therefore, the applicant has been convicted of two misdemeanor offenses.

The applicant is ineligible for TPS due to 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 and to deny the re-registration application will be affirmed.

Beyond the decision of the director, it is noted that the record of proceeding does not contain the applicant's birth certificate, a passport, and/or a national identity document from the applicant's country of origin bearing a photo and/or fingerprint, to establish his nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.