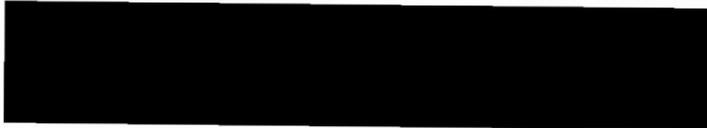




U.S. Citizenship  
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Services

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FILE:



Office: California Service Center

Date:

**MAY 29 2007**

[SRC 01 233 64513 & WAC 05 187 70277]

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:

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**DISCUSSION:** The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

It is noted that a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted; however, although the individual named indicated that he is an accredited representative, he did not identify an organization within the United States. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The record reveals that the applicant filed an initial TPS application on June 14, 2001, under CIS receipt number SRC 01 233 64513. The Texas Service Center director approved that application in May 21, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 5, 2005, under CIS receipt number WAC 05 187 70277, and indicated that he was re-registering for TPS.

The California Service Center director simultaneously withdrew the applicant's TPS and denied the re-registration application, on May 16, 2006, as he determined the applicant had been convicted of two misdemeanors, and therefore, did not maintain eligibility for TPS. The director noted that the applicant submitted a response to a notice of intent to withdraw, which indicates that the applicant had two DWI convictions relating to an arrest on August 29, 2000, by the Doraville Police Department, Doraville, Georgia; and, by the Lawrenceville Police Department, Lawrenceville, Georgia, on August 21, 2004.

The director, simultaneously, withdrew the applicant's temporary protected status as the applicant failed to maintain eligibility requirements for TPS. Since there was no appeal available for the re-registration application, the AAO will only consider the appeal of the director's decision to withdraw TPS.

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 for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

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 reflects that:

1. On August 29, 2000, the applicant was arrested by the Police Department, Doraville, Georgia, and charged with, Charge 1: DUI - ALCOHOL/MISD. The applicant pled guilty and the Doraville Municipal Court imposed a sentence of 40 hours Community Service, 12 months probation, and \$915.00 fines.
2. On August 21, 2004, the applicant was arrested by the Police Department Lawrenceville, Georgia, and charged with, Charge 1: Driving Under the Influence DUI. The Federal Bureau of Investigation fingerprint results report indicates a conviction, a 20-day confinement, 12 months probation, and a fine of \$1426.00. The applicant submitted a letter from Sentinel Offender Services, Lawrenceville, Georgia, dated December 14, 2005, stating that the applicant "...was placed on Misdemeanor probation on November 10, 2004 for 12 months," and that he had completed all special conditions and paid all fines, and his case was successfully closed on December 14, 2005.

The director determined, based on the record of proceedings, that the applicant had been convicted of two misdemeanors, and denied the application. As noted by the director, the applicant submitted a court disposition for the arrest on August 29, 2000, and a probation letter (referenced above) pertaining to the August 21, 2004 arrest. The applicant failed to submit a final court disposition for the arrest by the Lawrenceville Police Department, Lawrenceville, Georgia, on August 21, 2004; however, the evidence in the record and the documentation submitted by the applicant reflect that he has been convicted of two misdemeanors. Therefore, the applicant is not eligible for TPS. **In addition, the applicant has failed to submit all of the documentation requested by the director. Therefore, the director's decision to withdraw the applicant's TPS is 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.