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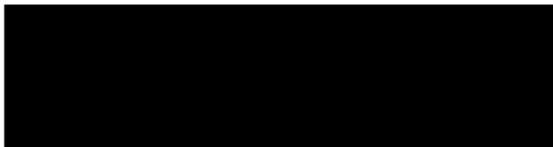
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **OCT 03 2007**
[SRC 01 256 55351]

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 Vermont Service Center. 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 TPS on July 18, 2003. The director subsequently withdrew the applicant's on September 18, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel acknowledges that the applicant was convicted for driving under the influence, leaving the scene of an accident and disorderly conduct, but argues that only one can be held against him for immigration purposes as the crimes arose out of a single scheme of conduct.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 issued on June 5, 2006, requesting that the applicant submit the final court dispositions of his arrest(s) on December 6, 2003, for leaving the scene of an accident, failure to stop at the scene of an accident – hit and run, and leaving the scene of an accident. In response, the applicant submits the court disposition of the following offenses:

On January 21, 2004, in the State Court of Cherokee in the State of Georgia under Case Numbers [REDACTED] (arrest date December 8, 2003), the applicant was convicted of driving under the influence of alcohol, obstruction of a law enforcement officer, leaving the

scene of an accident and disorderly conduct, all misdemeanors. The applicant was sentenced to confinement for a period of 12 months on each count with his sentences to run concurrently.

On appeal, counsel asserts that although the applicant was convicted of three misdemeanor crimes, these convictions stemmed from a single incident and therefore, he was convicted of only one criminal act.

That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS under section 244 of the Act. According to the court disposition, the applicant was charged with four separate offenses, he was "found guilty or pled guilty" to the four crimes and the court sentenced him for each count. Therefore, the applicant has been convicted of four separate and distinct misdemeanor offenses. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

The applicant is ineligible for TPS due to his record of four misdemeanor convictions, detailed above. 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 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.