

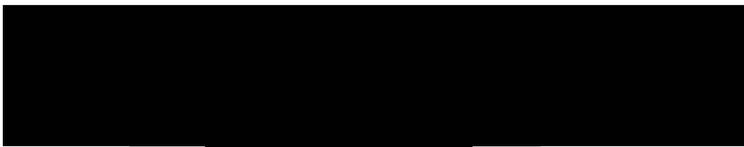
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 04 2008**
[EAC 07 258 51390, *appeal*]
[WAC 01 20456410]

INRE: 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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 January 13, 2005. The director subsequently withdrew the **applicant's** status and denied the re-registration application on August 16, 2007, when it was determined that the applicant had been convicted of two misdemeanors in the United States.

On **appeal**, the **applicant** acknowledges that he has been convicted of two misdemeanors, but submits documents concerning his personal and strong religious background along with testimonials in his behalf

The VSC Director withdrew the **applicant's** TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien **fails** without good cause to register with Citizenship and Immigration Services within thirty days before the end of **each** twelve-month period **after** the benefit is initially granted. The VSC Director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS **if** the alien was not in **fact** eligible at the time such status was granted, or at any time thereafter becomes ineligible.

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
- (t)
 - (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 (t)(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.

The record reflects that on **August** 11, 2006, the applicant was convicted by a Judge in the Superior Court of California, Pittsburg, of driving while **having a 0.08 or higher** blood alcohol level, a violation of Vehicle Code Section (VCS), 23152(b), Docket Number _____ and of driving a motor vehicle when his driving privilege is suspended or revoked, a violation of **VES** 14601.1, Docket Number _____ both misdemeanors.

The applicant is ineligible for TPS due to his record of two 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 TPS and deny the re-registration application 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.