

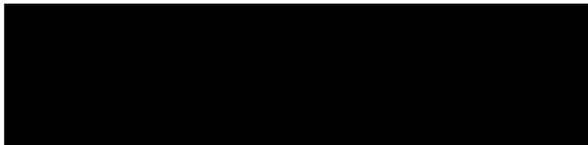
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **APR 28 2008**

[EAC 08 028 00624, *appeafj*

[WAC 01 16855657]

INRE:

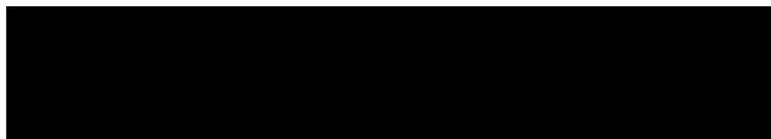
Applicant:



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 Vermont Service Center. Any further inquiry must be made to **that** office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vennont Service Center (VSC), and is now before the Administrative **Appeals** Office on appeal.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** 26, 2004. The director subsequently withdrew the applicant's **status** on October 3, 2007, when it was determined that the applicant had not provided court dispositions for theft charges on March 21, 2006 and on July 8, 2006.

On appeal, counsel states:

On October 03,2007, the U.S. CIS sent the applicant a Notice of Withdrawal of his TPS status. The Notice **stated** that the applicant has been arrested and convicted of petty theft on two occasions. The applicant was arrested On March 21,2006 for violating Section 488 of the Penal Code. The U.S. CIS notice also refers to that date when the applicant was booked. The docket sheet herein attached states as follows: "Bring docket and Photo ID for Book & Release on **7-8-06**".

Thus, the applicant has only been arrested and convicted for violating Section 488 of the Penal Code on one **occasion**, not twice.

The applicant was convicted of violating section 10852 of the Vehicle Code (Tampering with a Vehicle, a misdemeanor) in 1999. Please see attached Docket sheet.

The applicant, through his criminal attorney, is currently in the process of getting the conviction in this case reduced from a misdemeanor to an infraction. We would forward to you the judge's order reducing this case from a misdemeanor to an infraction. Thereby making the applicant eligible to **retain** his TPS status.

Counsel's assertion that the March 21, 2006 "arrest" cited by the director resulted from the applicant being booked for his previous arrest is substantiated by the record. Counsel stated that she would submit evidence reducing the applicant's tampering with a vehicle charge to an infraction; however, she has not done so. Therefore, the record is considered complete

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)(I) 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 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 parole; 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:

Fe/ony 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 the following offenses:

- (1) On May 3, 1999, the applicant was convicted by a Judge in the Municipal Court of Criminal Justice Center (LAC) Judicial District, County of Los Angeles, State of California, of tampering with a vehicle, a misdemeanor. (Case No. .)
- (2) June 21, 2006, the applicant was convicted by a Judge in the Superior Court of California, County of San Diego, California, of petty theft, a misdemeanor. (Case No. .)

While the VSC Director did not mention the conviction in Item # 1 above in his June 20, 2007 Notice of Intent to Withdraw, the record reveals that the applicant provided the court disposition for this offense in response to a November 15, 2003 request for evidence.

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.

It is noted that, in removal proceedings held on December 1, 1998, an Immigration Judge in Los Angeles, California, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Acting District Director of the Los Angeles, California, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on December 17, 1998.

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.