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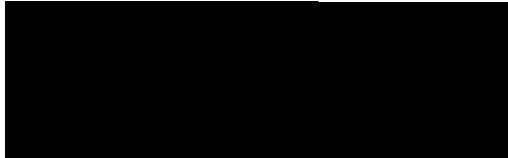
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



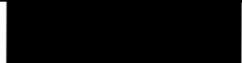
U.S. Citizenship  
and Immigration  
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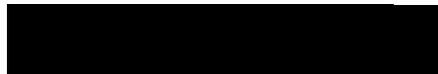
Office: VERMONT SERVICE CENTER

Date: **AUG 12 2008**

[EAC 08 050 51132, *appeal*]  
[SRC 01 203 57412]

IN RE:

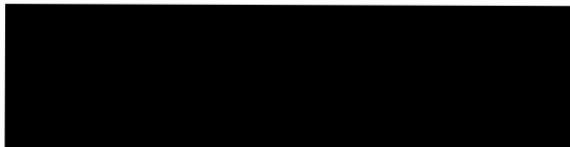
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 July 9, 2003. The director subsequently withdrew the applicant's status on November 8, 2007, when it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel states that the applicant was charged with two misdemeanors, but for the arrest on February 12, 2005 (driving while license invalid) he was actually convicted, on June 19, 2006, of the offense of "No Driver's License", a Class C misdemeanor. Counsel further states as such, there was no term of imprisonment that he could be sentenced to. Counsel argues that the second misdemeanor that the applicant was convicted of should not be considered a misdemeanor under federal regulations because it is a crime punishable by imprisonment for a maximum term of five days or less. The applicant submits additional documentation for consideration.

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 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.

The record reflects the following offenses:

- (1) On October 3, 2000, the applicant was convicted by a Judge in the County Court At Law in Guadalupe County, Texas, of driving while intoxicated, a misdemeanor. ( [REDACTED] ).

- (2) On March 3, 2005, a complaint was filed against the applicant and he was charged with driving while his license was invalid. It was specified that on or about the 12<sup>th</sup> of February, 2005, in Guadalupe County, Texas, he unlawfully, intentionally or knowingly operated a motor vehicle on a highway during a period that the privilege to drive a motor vehicle or Texas Class C license of the defendant was suspended or revoked. On June 19, 2006, the applicant signed a "misdemeanor waivers, confession, and agreement" document in which he judicially confessed to committing the offense of "NO DL "Class C," exactly as charged within the information or as a lesser included offense of the offense(s) charged in the information. As the information specified he unlawfully, intentionally or knowingly operated a motor vehicle on a highway during a period that the privilege to drive a motor vehicle or Texas Class C license of the defendant was suspended or revoked. Therefore, he was convicted of the offense of driving while his license was invalid, a Class C misdemeanor. (Cause No. [REDACTED])
- (3) The record contains a letter dated March 31, 2003 from the Comal County Sheriff's Office in New Braunfels, Texas showing that on March 2, 1998, the applicant was charged with having no driver's license and with having no insurance, both misdemeanors. The letter informs the reader to "contact prosecuting court(s) for final disposition." The applicant failed to provide the actual court dispositions for these offenses.
- (4) On his initial Form I-821, Application for Temporary Protected Status, when explaining his arrest record, the applicant states "2d D.W.I. - Comal County. September 2000. Disposition 2 years probation." The applicant failed to provide the actual court disposition for his first driving while intoxicated offense.

In his Notice of Intent to Withdraw dated May 17, 2007, the director requested the applicant furnish final court dispositions for any and all of his arrests. The applicant provided court dispositions for his driving while intoxicated conviction on October 3, 2000 and for the complaint filed against him on March 3, 2005 (Items # 1 and #2 above). However, he did not provide court dispositions for his March 2, 1998 arrest for having no driver's license and no insurance (Item # 3 above). Nor did he provide a court disposition for his second driving while intoxicated charge that he indicated occurred in Comal County in September 2000 for which he received two years probation (Item # 4 above).

The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw 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.