



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[EAC 02 177 50738]

Date: FEB 01 2008'

INRE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act (the 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 Director, Vennont Service Center (VSC), denied the application for re-registration and withdrew the approval of the initial application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (I.N.A. or the Act), 8 U.S.c. § 1254 on May 27, 2003.

The director denied the re-registration application because the applicant failed to provide the final court disposition for his criminal arrests and withdrew the approval of the initial application.

On appeal, the applicant submits the dispositions of his two misdemeanor convictions.

Section 244(c) of the Act, and the related regulations in 8 C.P.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.P.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 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 (E)(2) of this section.

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security (DHS) 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).

Section 244(c)(2)(B)(i) of the Act states that:

- (B) Aliens ineligible.-An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that
  - (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States.

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

Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

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 burden of proof is on the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that on October 2, 2002, in Prince William General District Court, Prince William, Virginia, the applicant pleaded guilty to the following offense:

1. Concealing Merchandise under \$200, or Petit Larceny, under §18.2-66 of the Code of Virginia.

In Virginia, Petit Larceny is considered a class 1 misdemeanor. The authorized punishment for conviction of a class 1 misdemeanor is confinement in jail for up to twelve months. Therefore, the applicant's conviction for Concealing Merchandise under §200 is a misdemeanor for purposes of determining TPS eligibility.

On November 22, 2005, in Prince William General District Traffic Court, in Prince William, Virginia, the applicant pleaded guilty to the following offense:

2. Driving Under the Influence, under §18.2-66 of the Code of Virginia.

The court disposition indicates that the applicant committed this offense within less than five years after having committed one prior violation of §18.2-66 or an offense set forth in subsection E of §18.2-270 of the Code of Virginia. In Virginia, Driving Under the Influence is classified as class 1 misdemeanor offense, and, any person convicted of a second offense committed within less than five years after a first offense under § 18.2-66 shall upon conviction of the second offense be punished by confinement in jail for not less than one month and not more than one year. Therefore, the applicant's conviction for Driving Under the Influence is considered a misdemeanor for purposes of determining TPS eligibility.

On August 28, 2006, the applicant filed the current re-registration application (EAC06 322 75121). In support of the application, the applicant submitted the disposition for the November 22, 2005, DUI conviction, but did not submit the disposition for the October 2, 2002, Concealing Merchandise conviction.

On September 20, 2006, the director sent the applicant a Notice of Intent to Withdraw his TPS because the applicant had been arrested on two occasions. The director requested that the applicant submit the final court dispositions of every charge against him. The applicant did not respond to the director's request and did not submit the disposition of the 2002 conviction.

The director determined that the applicant abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. The director withdrew the applicant's TPS pursuant to 8 C.P.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.P.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, the applicant submits the dispositions for his two convictions.

By submitting the final dispositions of both arrests, the applicant has complied with the requirement to provide all documents necessary for the adjudication of his application. The dispositions, however, reveal that the applicant has been convicted, of two misdemeanors and is ineligible for TPS under the specific criminal provisions for TPS applicants under § 244(c)(2)(B)(i) of the Act. The re-registration application will be denied pursuant to § 244(c)(2)(B)(i) of the Act and the applicant's TPS will be withdrawn pursuant to the regulation at 8 C.P.R. § 244.14(a)(1).

An alien applying for TPS 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 that burden.

**ORDER:** The appeal is dismissed.