

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1

JUL 21 2008

FILE:

[SRC 02 242 54753]

Office: VERMONT SERVICE CENTER

Date:

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:

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.

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

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period on July 5, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 02 242 54753. The Director, Texas Service Center, approved that application on March 24, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on August 27, 2006, and indicated that he was re-registering for TPS.

The record reveals the following offenses:

- (1) On November 22, 2003, the applicant was arrested by the Houston, Texas Police Department for "Asslt Public Servant" a felony. The applicant was convicted of this charge on April 22, 2004.

According to the final court disposition from the County Criminal Court of Harris County, Texas, the applicant pled guilty, the adjudication of guilt was deferred, and the applicant was placed on probation for two years. Section 322(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), specifically states that the amendment of the definition of conviction "shall apply to convictions and sentences entered before, on, or after the date of enactment of this Act. As the Supreme Court stated in *Landgraf v. US Film Prods.*, 511 U.S. 244, 114 S. Ct. 1483 (1994), the principle of applying the law in effect at the time of the decision does not conflict with the "presumption against retroactivity when the statute in question is unambiguous." Concerning the definition of conviction, the unambiguous language of section 322(c) leaves no doubt that Congress intended for the amendment in section 322(a) to be applied retroactively. *Moose v. INS*, 171 F.3d 994, 1007 (5th Cir. 1999).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court disposition submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of punishment to the charge above. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

The director withdrew temporary protected status because the applicant had been convicted of a felony in the United States.

On appeal, the applicant concedes that he made an error. The applicant also states that he is a different person now and requests that he be given his work authorization. The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. The applicant remains ineligible for TPS due to his record of a felony offense. Consequently, the director's decision to withdraw the applicant's TPS will be 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.