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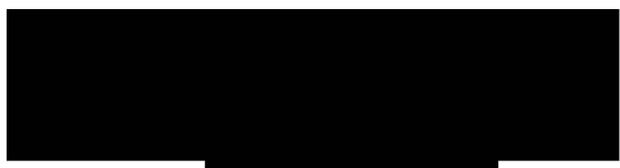
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAR 21 2008**
[EAC 07 236 51759, appealj
[WAC 01168 54053 Application]

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:



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.


for Robert P. Wiemann,
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on May 13, 2002. The director subsequently withdrew the applicant's Temporary Protected Status on July 11, 2007, when it was determined that the applicant had failed to submit a final court disposition for his April 8, 2005 arrest by the Police Department in Richmond, California for prostitution and driving under the influence of alcohol or drugs (DUI).

On appeal, counsel states that the applicant acknowledges that he was arrested for prostitution on April 8, 2005 and that he was requested to take a Breathalyzer test. Counsel further states that his client does not remember having been given a citation for driving under the influence on that date and that **states** that no formal charges were filed as a result of his arrest. Counsel resubmits a copy of Notice to Appear Form dated April 19, 2005, approved by the Judicial Council of California, advising the applicant to appear in the Superior Court in Richmond, **California**, on May 26, 2005, on a PC 647B prostitution charge, a misdemeanor. Counsel submits letters from the Clerks of the Court for the Superior Court of California, County of Contra Costa, in Richmond **California under the name** [REDACTED] and [REDACTED] with his correct birth date certifying that no record was found on the **named individual**.

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 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 (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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on February 11, 2002, he was arrested by the Police Department in Richmond, California, and charged with prostitution and driving under the influence.

On appeal, counsel provides the citation for the prostitution charge which indicates that the applicant was to appear in the Superior Court in Richmond, California, on that charge. The applicant indicates that he was not convicted of that charge and provides six certifications under variations of his name from the Superior Court of California, County of Contra **Costa**, in Richmond **California**, **indicating** he has no record in that court. The applicant also indicates that he was not cited for driving under the influence (DUI). The documentation submitted on appeal substantiates the applicant's assertion that he was not convicted of the prostitution charge. Even if he had been found guilty of DUI, he would have been convicted of one misdemeanor charge. Based on the circumstances in this case, it is not clear that that applicant was formally charged with DUI when he was arrested on February 11, 2002.

The applicant is not ineligible for TPS due to the two misdemeanor charges reflected on his FBI fingerprint results report listed above. Consequently, the director's decision will be withdrawn and the appeal will be sustained.

An alien applying for TPS has the burden of proving that he or she meets the above requirements and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The director's decision is withdrawn and the **appeal** is sustained.