

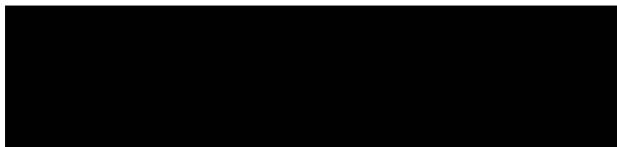
identifying data deleted to  
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U.S. Department of Homeland Security  
20 Mass. Avenue, N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

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FILE:

[EAC 05 138 75808]  
[SRC 02 220 55215]

Office: CALIFORNIA SERVICE CENTER

Date:

**MAR 25 2008**

INRE:

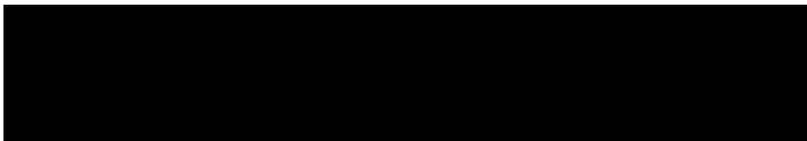
Applicant:



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:



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".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (CSC), withdrew the approval of the application and denied the applicant's application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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.

The director withdrew the approval of the application and denied the re-registration application because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant asserts that the applicant's convictions are for traffic offenses and not crimes and that he is therefore eligible for TPS.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations in 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
- (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 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

- (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 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 the applicant pleaded guilty, or was found guilty of driving without a license, in violation of Title 55 Chapter 50 Section 351 of the Tennessee Code, in the Criminal Court of Davidson County, in Davidson County, Tennessee, on the following dates:

1. July 12, 2004;
2. December 31, 2004; and,
3. January 24, 2005.

On July 12, 2004, the applicant was sentenced to no jail time and a fine of \$2.00. On December 31, 2004, the applicant was sentenced to 2 days in jail. On January 24, 2005, the applicant was sentenced to 15 days in jail.

In Tennessee, a conviction for driving without a license is classified as a Class C misdemeanor and can result in up to no more than thirty (30) days imprisonment.

The regulations at 8 C.F.R. § 244.1 define a misdemeanor as a crime punishable by imprisonment for a term of more than 5 days, regardless of the term such alien actually served. In the applicant's case, he was convicted of three Class C misdemeanors, each punishable by no more than 30 days imprisonment. For purposes of TPS eligibility, the applicant has been convicted of at least three misdemeanors, regardless of the fact that they are violations under the Motor and Vehicle section of the Tennessee Code and regardless of the actual sentences imposed and served. The dispositions submitted by the applicant indicate that he stands convicted of at least three misdemeanors and is ineligible for TPS under the specific criminal provisions for TPS applicants under Section 244(c)(2)(B)(i) of the Act. Consequently, the director's decision to withdraw the approval of the TPS application and deny the re-registration application will be affirmed.

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.