

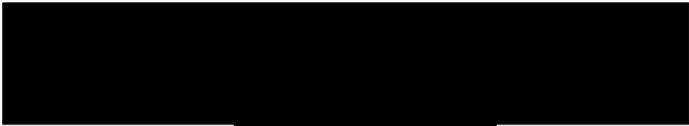


**U.S. Citizenship
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Services**

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 01 2008
[EAC 08 032 51514, appealj
[WAC 02 225 52285]

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: SELF-REPRESENTED

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DISCUSSION: The applicant's **Temporary** Protected Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 case will be remanded.

The applicant is **stated** to be a native and citizen of El Salvador who was **granted** TPS on February 11, 2003. The director subsequently withdrew the applicant's **status** on October 11, 2007, when it was determined that the applicant had not provided adequate documentation explaining arrests on September 4, 2005 and June 5, 2006 for driving under the influence of alcohol or drugs (DUI).

On appeal, the applicant acknowledges that he was arrested on September 4, 2005 and charged with DUI. He explains that on June 5, 2006, he was fingerprinted at the Monterey County Sheriff's office and had photographs taken in order to enroll for the work alternative program that was necessary to fulfill his sentence for his DUI conviction. He requests that his case be reviewed and states that the actions on both dates, September 4, 2005 and June 5, 2006, are related to case number "[REDACTED]" which arose from his September 4, 2005 arrest.

The VSC Director withdrew the applicant's TPS following 8 C.F.R § 244.14(a)(3) which provides for withdrawal of **status** **if** the alien **fails** without good cause to register with Citizenship and Immigration Services within **thirty** days before the end of each twelve-month period after the benefit is initially granted. He should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS **if** the alien was not in fact eligible at the time such status was **granted**, or at any time thereafter becomes ineligible.

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 that on March 28, 2006, the applicant was convicted by a Judge in the Superior Court of California, County of San Benito, of driving while having a 0.08 or higher blood alcohol level, a violation of Vehicle Code Section (YCS), 23152(b), Docket Number CR 05-01985, a misdemeanor.

On appeal, the applicant acknowledges that he was arrested on September 4, 2005 and charged with DUI. His California Department of Motor Vehicles driver license/identification card information request form dated October 24, 2007, substantiates that his conviction on March 28, 2006, was for his arrest on September 4, 2005. The information request also shows that the applicant has one conviction for DUI.

The applicant explains that on June 5, 2006, he was fingerprinted at the Monterey County Sheriffs office and had photographs taken in order to enroll for the work alternative program that was necessary to fulfill his sentence for his DUI conviction. This statement is substantiated by a letter dated July 14, 2006, from the Work Alternative Coordinator of the Office of the Sheriff in Monterey County, California, in Salinas. The Work Alternative Coordinator states, in part, that the applicant was enrolled in the Work Alternative Program on June 5, 2006, under case . The applicant's Federal Bureau of Investigation fingerprint results report documents his arrest on September 4, 2005, when he was arrested by the Highway Patrol in Gilroy California and charged with DUI. The report also establishes that he was fingerprinted by the Sheriffs Office in Salinas on June 5, 2006, which coincides with his enrollment in the work alternative program stemming from his March 28, 2006 DUI conviction.

The documentation submitted by the applicant establishes that he was convicted of a single misdemeanor offense. Therefore, his criminal record does not make him ineligible for TPS.

Although not addressed by the director, the applicant has provided insufficient evidence to substantiate his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Additionally, he has not substantiated that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

The director's decision is withdrawn; the application will be remanded for a new decision addressing the issues detailed above. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

In these proceedings the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.c. § 1361.

ORDER: The initial application is reopened, the director's decision is withdrawn and the application is remanded for the entry of a new decision.