

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

M1

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **MAY 2 72008**
[WAC 02 271 53862]

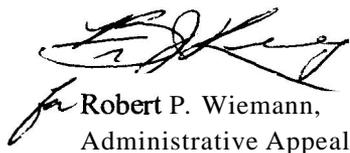
INRE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and the re-registration application denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. 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 (the Act), 8 U.S.C. § 1254, on December 3, 2003.

The director withdrew the applicant's TPS and denied the re-registration application on August 30, 2007 after he determined that the applicant was ineligible for TPS because he had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant indicates that he is sending a brief and/or evidence within 30 days, however, to date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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 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.

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. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 record shows the following:

1. On February 13, 2006, the applicant was arrested by the Santa Ana Sheriff's Office, Agency Case No. _____ under the name _____ and charged with Count 1- INFLICT INJURY UPON SPOUSE. On March 1, 2006, in the Superior Court of the State of California, County of Orange, Docket Report, Case No. _____, the applicant pled guilty to Count 1. He was placed on 3 years Informal Probation on the following terms and condition: cooperate in any plan for treatment or counseling; do not own, use, or possess any type of dangerous or deadly weapon for 10 years; use true name and date of birth only at all times; and, attend and complete a Domestic Violence Batterer's Treatment Program.
2. On May 18, 2003, the applicant was arrested and charged with Count 1 – charge of 12500(a) VC - Driving Without a Valid Drivers License in California, a misdemeanor, Count 2 - charge of 20002(a) VC - a misdemeanor Hit and Run, Count 3 – Infraction charge of 16028(a) VC, and Count 4 - Infraction charge of 22107 Vc. On July 22, 2003, in the Superior Court of the State of California, County of Orange, Docket Report, Case No. _____ M A, the applicant pled guilty to all counts. The applicant was placed on 3 years Informal Probation, ordered to complete 40 Hours Community Service, and to pay \$200 in fines as to Count 2. The applicant was also ordered to pay \$100 plus penalty assessments in fines as to Count 1, and \$101 plus penalty assessment in fines as to count 3. As to Count 4, Sentenced Suspended.
3. The applicant was convicted in Texas on May 18, 1998, on a charge of illegal re-entry into the United States after deportation. On August 27, 1998 he was sentenced to time served-103 days, 1 YR SR.

The court disposition in the record clearly establishes that the applicant has been convicted of two or more misdemeanors. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Accordingly, the applicant is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the TPS application for this reason 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.