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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: OCT 02 2008  
[WAC 01 171 50200]

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and the re-registration application was denied by the Director, Vermont Service Center.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

The applicant is stated be a citizen of El Salvador who was granted Temporary Protected Status (TPS) on February 27, 2002, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On January 11, 2008, the Service Center notified the applicant of its intent to deny his re-registration application and to withdraw his TPS. A criminal history check has revealed that the applicant was arrested: (1) by the Los Angeles Police Department and charged with DUI ALCOHOL/DRUG; (2) by the San Francisco Police Department and charged with DUMP ROCK, PUB, COMERCL AMT; and (3) by the San Francisco Police Department and charged with (a) DUI ALCOHOL/DRUG, and (b) DRIV, SUSP/ETC LIC, DUI, VIO. The director afforded the applicant 30 days to submit the final court disposition regarding every charge against him.

On May 9, 2008, the director subsequently withdrew the applicant's Temporary Protected Status and denied the re-registration application after he determined that the applicant had failed to timely respond with any evidence to overcome the grounds for withdrawal.

On appeal, the applicant submits the final court dispositions regarding two of his arrests.

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 of proceeding reflects the following:

1. On November 5, 2000, the applicant was arrested by the Police Department Los Angeles, Agency Case No. [REDACTED], and charged with: Count (1) – 23152 (A) VC MISD – UND INFLNCE ALCHL/DRUG IN VEH; Count (2) – 23152 (B) VC MISD - .08% MORE WGHT ALCHL DRIVE VEH; Count (3) – 12500 (A) VC MISD – UNLICENSED DRIVER; and, Count (4) – 16028 (A) VC INF – NO PROOF OF CAR INSURANCE. On November 6, 2000, in the Superior Court of California, County of Los Angles, in the Metropolitan Courthouse Division 066, the applicant was convicted of Counts (2 and 4). As to Count (2), imposition of sentence suspended, the applicant was placed on summary probation for a period of 36 months and to pay \$510 in fines. As to Count (4), imposition sentence suspended. The remaining Counts (1 and 3) were dismissed.
2. On December 22, 2003, the applicant was arrested by the Police Department San Francisco, Agency Case No. [REDACTED], and charged with Count (1) – FIGHT IN PUBLIC PLACE; and, Count (2) – DUMP ROCK, PUB, COMERCL AMT. On March 3, 2004, in the Superior Court of California, County of San Francisco, a jury found the applicant not guilty and the court dismissed all charges.
3. On August 5, 2006, the applicant was arrested by the Police Department of San Francisco, Agency Case No. [REDACTED] and charged with Count (1) – DUI ALCOHOL/DRUGS; and Count (2) – DRIV, SUSP/ETC LIC, DUI, VIO. The final court disposition for these charges, however, is not contained in the record.

The record reflects that the applicant was convicted of Charges 2 and 4 in Item #1 above. However, the applicant has failed to comply with the director's request to provide the final court disposition for every charge against him. Therefore, the director's decision to withdraw the applicant's Temporary Protected Status 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.