

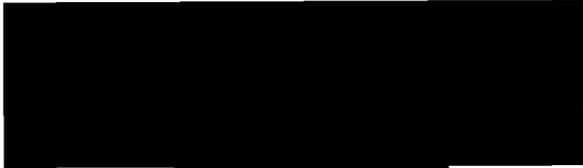


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

M1



FILE:

Office: VERMONT SERVICE CENTER

Date: SEP 04 2008

[EAC 08 068 50945, appeal]

[LIN 01 182 51983]

IN RE:

Applicant:



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.

Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the appeal will be sustained.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 TPS on October 27, 2001. The director withdrew the applicant's status and denied the re-registration application on December 4, 2007, when it was determined that the applicant had failed to submit evidence of the final disposition of an arrest on January 8, 2006, for battery causing bodily harm and an arrest on March 20, 2006, for driving under the influence.

On appeal, the applicant states:

I would like to appeal my case because I have committed two wrongs for which I am deeply apologetic. I realize that I should not have done these things and have promised myself, as I promise to you, that I will never do these things again. I am completely aware that this is an error that I should have avoided but I have done my very best to make up for them. In regard to the DUI, I completed the classes ordered as ordered by the Judge in my case. And, in regard to the fight that I was arrested for, I personally apologized to the other party and that person forgave me and did not accuse me further.

Please take this into consideration because I promise to do my very best to be a model citizen, set a good example and work hard in this country to get ahead for my children and my family, that he has already completed DUI training and paid his fine, for his registration and for a new license. The applicant submits additional documentation for consideration.

The applicant submits certified statements of disposition from the Clerk of the Circuit Court of Cook County, Illinois, showing that he was arrested on March 20, 2006, and convicted on by a Judge in the Circuit Court of Cook County, Illinois, on May 15, 2006, of driving under the influence of alcohol under section 11501A1 of the Illinois Vehicle Code, a misdemeanor, (No. [REDACTED]), and that the Judge determined that he would not be prosecuted for a second charge under section 11502A2, (No. [REDACTED]). He also submits a certified statement of disposition from the Clerk of the Circuit Court of Cook County, Illinois, showing that on March 30, 2006, a Judge determined that he would not be prosecuted for his arrest for battery causing bodily harm. (Number [REDACTED]).

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. The director 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.

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 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 director withdrew the applicant's TPS when it was determined that the applicant had failed to submit evidence of the final disposition of an arrest on January 8, 2006, for battery causing bodily harm and an arrest on March 20, 2006, for driving under the influence. On appeal, the applicant has submitted court dispositions for both of the arrests cited by the director.

The documentation submitted by the applicant establishes that he was convicted of one misdemeanor. Therefore, he remains eligible for TPS. There are no other known grounds of ineligibility; therefore, 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.