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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

ML

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: APR 30 2009

[SRC 01 164 58646]

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:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period on April 2 2001, under receipt number SRC 01 197 56252. The Director, Texas Service Center, approved that application on October 27, 2003.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

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. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The record reveals the following offenses:

- (1) On January 11, 2003, the applicant was arrested by the Houston, Texas Police Department for "Asslt Causes Bodily Inj" and "Criminal Trespass [REDACTED]"

Pursuant to a letter dated January 11, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documents. According to the final court dispositions, on February 10, 2003, the applicant pled guilty and was convicted of "Trespass Prop/Bldg-No Forb Ent," a misdemeanor and "Assault-Bodily Injury," a misdemeanor.

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, the applicant claims that the convictions arose out of a single scheme of criminal misconduct. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to the issue of his *removability* under section 237 of the Act, this determination has no bearing on his *eligibility* for TPS or his *admissibility* under section 212(a) of the Act. The applicant's assertion that the misdemeanors arose in a single occasion and, therefore, he was convicted of a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled guilty to two separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses. The applicant is ineligible for TPS because of his misdemeanor convictions. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.