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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

U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 01 195 52018]

Office: VERMONT SERVICE CENTER

Date: OCT 01 2009

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was withdrawn by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 director determined that the applicant had been convicted of two or more misdemeanors in the United States. The director, therefore, denied the application.

The record reveals that the applicant filed a TPS application during the initial registration period on May 9, 2001, under receipt number EAC 01 195 52018. The Director, Vermont Service Center, approved that application on April 10, 2002.

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).

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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.

The FBI report reveals the following offenses:

(1) On September 22, 2006, the applicant was arrested by the Attleboro, Massachusetts Police Department for "Assault & Battery."

- (2) On September 25, 2006, the applicant was arrested by the North Dartmouth, Massachusetts Sheriff's Office for "OUI – Liquor, 2nd Offense."

Pursuant to a notice dated March 24, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted the requested court dispositions. According to these documents:

- (1) On October 16, 2006, the "Assault & Battery" charge was dismissed.
- (2) On May 10, 2006, the applicant pled guilty and was convicted of "OUI–Liquor, 2nd Offense", "Negligent Operation of Motor Vehicle", and "Leave Scene of Property Damage."

The applicant is ineligible for temporary protected status because of his misdemeanor convictions. 8 C.F.R. § 244.4(a).

On appeal, counsel states that the applicant is eligible for TPS because these charges arose out of a single scheme of conduct. However, while the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (the Act), this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court disposition, the applicant was charged with four separate violations to which he pled guilty to three separate crimes and the court ordered three separate punishments. Therefore, the applicant has been convicted of three separate and distinct misdemeanor offenses.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Counsel's statement, on appeal, does not overcome the adverse evidence in the record. Consequently, the director's decision to withdraw 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.