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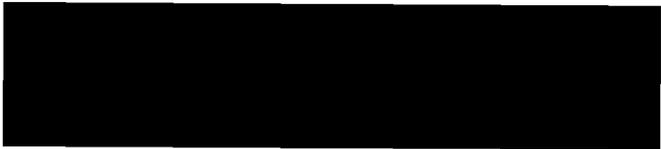
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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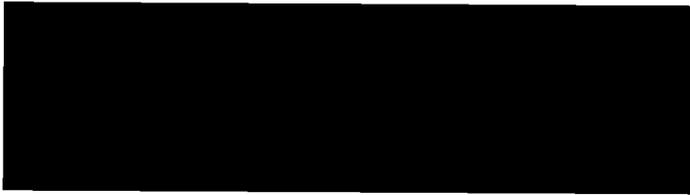
FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[WAC 01 226 56087]

Date FEB 04 2010

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:



**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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, and it is now before the Administrative Appeals Office 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 March 26, 2001, under receipt number WAC 01 226 56087. The Director, California Service Center, approved that application on June 20, 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).

The director withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record.

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.

The record reveals the following offenses:

- (1) On January 20, 2006, the applicant was arrested by the Los Angeles, California Sheriff's Department for "Driving Without a License."
- (2) On February 16, 2007, the applicant was arrested by the Los Angeles, California Police Department for "Driving Without a License."
- (3) On May 31, 2007, the applicant was charged by the Los Angeles, California Police Department with "Failure to Appear."
- (4) On October 26, 2007, the applicant was arrested by the Norwalk, California Police Department for "Drive W/O License." [REDACTED]
- (5) On February 12, 2008, the applicant was charged by the Los Angeles, California, Police Department with "Failure to Appear, Writ Promise." [REDACTED]

Pursuant to a letter dated January 25, 2008, the applicant was requested to submit the final court dispositions for each of the charges detailed above. The applicant failed to respond to the notice.

The director withdrew temporary protected status because the applicant failed to submit the requested court documents.

On motion, the applicant submitted court records that indicate that on February 13, 2008, the applicant was convicted of "Driving Without a License," and "Failure to Appear," both misdemeanors. The director subsequently affirmed the initial decision to withdraw the applicant's TPS because he had been convicted of two misdemeanors. The applicant subsequently appealed the decision.

On appeal, counsel for the applicant states that the two misdemeanor convictions arose from the same facts and occurrences and the convictions were rendered when the applicant was not represented by counsel. Counsel also claims that the convictions are constitutionally invalid and that court disposition would be submitted on this matter. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete. 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 (7<sup>th</sup> 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 two separate violations to which he pled guilty to two separate crimes and the court ordered two separate

punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses. Furthermore, USCIS is not responsible for whether the applicant was represented by counsel or not. Counsel's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for the reasons mentioned by counsel, of the requirements stated above.

The applicant is ineligible for TPS because of his misdemeanor convictions.

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.