

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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**

**PUBLIC COPY**

M1

FILE: [REDACTED]  
[WAC 01 184 51970]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 05 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:

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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

The applicant is 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 denied the application because the applicant had been convicted of at least two misdemeanors.

On appeal, counsel asserts the director's decision is flawed as it cites 8 C.F.R. § 244(c)(3)(A) and (C) in support of withdrawing the applicant's TPS. Counsel asserts that the applicant was eligible at the time of his initial application and has re-registered as required. Counsel asserts that the applicant anticipates that his 2007 and 2008 convictions will be vacated.

The director may withdraw the status of an alien granted TPS 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. Section 244(c)(3)(A) of the Act and 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).

"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 Federal Bureau of Investigation (FBI) report dated April 14, 2009, reflects that the applicant was arrested on August 20, 2006 and May 16, 2008, by the Sheriff's Office in Wautoma, Wisconsin for operating a vehicle while revoked.

In response to the Notice of Intent to Withdraw TPS issued on April 15, 2009, the applicant submitted court documentation from the Wood County and Waushara County Circuit Courts of Wisconsin, which revealed the following:

1. On April 12, 2004, the applicant was arrested for operating a vehicle with .10 percent or more alcohol, a violation of section 346.63(1)(b), and operating a vehicle without a valid license, a violation of section 343.05(3)(a), both misdemeanors. On May 24,

2004, the applicant pled no contest to both offenses. [REDACTED] and [REDACTED]

2. On August 20, 2006, the applicant was arrested for operating a vehicle while revoked, a violation of section 343.44(1)(b). On January 29, 2007, the applicant pled guilty to the offense. [REDACTED]
3. On May 16, 2008, the applicant was arrested for operating a vehicle while revoked, a violation of section 343.44(1)(b). On January 5, 2009, the applicant pled guilty to the offense. [REDACTED]

On June 8, 2009, the director withdrew the applicant's temporary protected status because he had at least two misdemeanor convictions.

The director may withdraw the status of an alien granted TPS 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*. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1). [Emphasis added].

On appeal, counsel asserts that the Act provides that the applicant became ineligible for TPS upon his second misdemeanor conviction in 2007 and, therefore "USCIS could have denied his application to re-register at that point, or could have moved to terminate his TPS."

USCIS records do not reflect that the applicant filed an application for re-registration or employment authorization during 2007. As such, the director was not made aware of the second misdemeanor conviction until after the applicant filed his re-registration application on November 25, 2008. The applicant provided biometrics, which initiated a background and security check with the FBI that revealed the applicant's 2007 and 2008 arrests.

The record reflects that the director withdrew the applicant's TPS effective June 8, 2009, *after* it was revealed that the applicant had a second misdemeanor conviction and no credible evidence was submitted to dispute this finding. Therefore, counsel's assertion on appeal that the director's decision purports to withdraw the applicant's TPS from the date it was granted in 2001 is without merit.

On appeal, counsel asserts that the cases in number two and three above should be vacated and the applicant's pleas withdrawn as "the transcripts revealed that the judge in both cases failed to read [the applicant] the required immigration warnings." Counsel provides the initial court transcripts in each case.

The record before the AAO clearly establishes that the applicant has three misdemeanor convictions and there is no evidence that any of the judgments of conviction have been vacated for underlying procedural defects having to do with the merits of the cases. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). Therefore, the applicant's convictions will stand for immigration purposes.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS 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.