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**SEP 25 2009**

FILE: [REDACTED]  
[LIN 01 158 51904]

Office: VERMONT SERVICE CENTER

Date:

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).

  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 1, 2001, under receipt number LIN 01 158 51904. The Director, Nebraska Service Center, approved that application on April 24, 2001.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) 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 June 25, 2005, the applicant was arrested by the Sioux City, Iowa Police Department for "Assault – Simple Domes." [REDACTED]

Pursuant to a letter dated June 25, 2007, the applicant was requested to submit the final court disposition for the charge detailed above. The applicant provided a copy of the requested court documentation. According to the final disposition provided by the applicant, on September 20, 2005, the applicant was convicted of "Domestic Assault", a misdemeanor, and a finding of deferred adjudication was entered. The applicant also submitted a final court disposition that indicated on September 20, 2002, the applicant was arrested by the Sioux City, Iowa Police Department for "Theft-5<sup>th</sup> Degree" [REDACTED] and on September 21, 2002, the applicant pled guilty to and was convicted of "Theft-5<sup>th</sup> Degree", a misdemeanor.

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

On appeal, counsel for the applicant claims that the applicant's conviction for "Domestic Violence" had been dismissed because the applicant completed probation. Counsel therefore contends that the applicant has only been convicted of one misdemeanor. However, the term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of

guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

Section 322(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), specifically states that the amendment of the definition of conviction “shall apply to convictions and sentences entered before, on, or after the date of enactment of this Act. As the Supreme Court stated in *Landgraf v. US Film Prods.*, 511 U.S. 244, 114 S. Ct. 1483 (1994), the principle of applying the law in effect at the time of the decision does not conflict with the “presumption against retroactivity when the statute in question is unambiguous.” Concerning the definition of conviction, the unambiguous language of section 322(c) leaves no doubt that Congress intended for the amendment in section 322(a) to be applied retroactively. *Moose v. INS*, 171 F.3d 994, 1007 (5<sup>th</sup> Cir. 1999).

The court disposition submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of punishment to the charge above. Therefore, the applicant has been “convicted” of this offense for immigration purposes.

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

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.