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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
[SRC 02 095 53683]

OFFICE: Vermont Service Center

Date:

SEP 17 2007

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant, who claims to be a citizen of El Salvador, was granted Temporary Protected Status (TPS) on January 6, 2003, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director subsequently withdrew TPS because the applicant failed to provide necessary documentation relating to his criminal record.

On appeal, the applicant provides several court dispositions.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act if 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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.

The record reflects the following offenses in Georgia under the name [REDACTED]

1. On March 4, 2003, the applicant was arrested in Lawrenceville for unlawfully entering an auto. (Case [REDACTED] Prosecution of this charge was declined on June 8, 2004.

2. On June 15, 2005, the applicant was arrested in Marietta for hit and run. Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
3. On December 5, 2005, the applicant was arrested in Marietta for contributing to the delinquency of a minor in violation of section 16-12-1(b)(2) O.C.G.A. and driving without a valid driver's license in violation of section 40-5-20 O.C.G.A. (Case [REDACTED] On May 31, 2006, the applicant pled guilty to these two misdemeanors in the State Court of Cobb County.
4. On February 28, 2006, the applicant was arrested in Marietta for hit and run in violation of section 40-6-270 O.C.G.A., following too closely in violation of section 40-6-49 O.C.G.A., and for driving with a suspended or revoked license in violation of section 40-5-121 O.C.G.A. (Case [REDACTED] On May 31, 2006, the applicant was convicted of these three misdemeanors in the State Court of Cobb County.

The applicant is ineligible for TPS due to his record of at least five misdemeanor convictions detailed in Nos. 3 and 4 above. Section 244(c)(2)(B)(i) of the Act, and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw the applicant's Temporary Protected Status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a citizen of El Salvador. The applicant has provided a copy of his birth certificate. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification or national identity document as required under 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore, the applicant is also ineligible for TPS for this additional reason.

The appeal will be dismissed 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.