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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

MA

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 03 2010**

[EAC 01 194 51541]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. A subsequent appeal was remanded by Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is seeking 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 May 7, 2001. The Director, Vermont Service Center, approved that application on December 21, 2001.

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. 8.C.F.R. § 244.14(a)(1).

The director withdrew the applicant's TPS because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant stated that the director erred in withdrawing the applicant's TPS. Counsel contends that assault and battery could also arise in a domestic dispute and, therefore, "it is not clear as to the charge because application of law changes based on the type of assault and battery." Counsel indicates at item 2 of the appeal form that he would submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

On March 3, 2010, the AAO remanded the case for inclusion of the adverse evidence used as the basis for the withdrawal of the applicant's TPS along with the TPS application dated April 25, 2001. Those documents were subsequently placed in the record. Therefore, this office will now adjudicate the record.

An alien shall not be eligible for TPS 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 "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 July 24, 2006, the applicant was arrested by the Fairfax County Virginia Police Department for "Assault and Battery Against a Family or Household Member." (Case # JA 338606-04-01).
- (2) On August 24, 2006, the applicant was arrested by the Fairfax County Virginia Police Department for "Assault and Battery Against a Family or Household Member." (Case # JA 382967-01-01).

On January 11, 2007, the director withdrew the applicant's TPS because the record reflected the applicant had been convicted of assault and battery on September 21, 2006 and on October 5, 2006.

According to the final court dispositions, on September 21, 2006, the applicant was convicted of a violation of section 18.2-57.2, assault and battery against a family or household member, and on October 5, 2006, the applicant was convicted of a violation of section 18.2-57.2, assault and battery against a family or household member, both Class 1 misdemeanors.

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

An alien applying for TPS 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.