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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

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M<sub>1</sub>

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 07 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:

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 office that originally decided your case. 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 office that originally decided your case 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter 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 withdrew the applicant's TPS because the applicant had failed to submit the requested court documents, in their entirety, relating to his criminal record.

On appeal, counsel asserted that the applicant was not informed of the immigration consequences associated with a guilty plea at the time of his arrests. Counsel asserted that the applicant's family would suffer hardship and extreme emotional trauma if the applicant is denied TPS renewal. Counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. However, more than seven months later, no additional correspondence has been presented by counsel or the applicant.

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).

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.

In response to the Notice of Withdrawal of TPS issued on March 31, 2009, the applicant submitted a "Satisfaction of Judgment and Sentence Early Discharge" document from the Douglas County Court of Nebraska. The document indicated the court had found that the applicant had satisfactorily completed the conditions of his probation and, therefore, he was released from probation in Case no. [REDACTED]

On appeal, counsel submits:

1. A "Satisfaction of Judgment and Sentence Early Discharge" document from the Douglas County Court of Nebraska. The document indicated the court had found that the applicant had satisfactorily completed the conditions of his probation and, therefore, he was released from probation in Case no. [REDACTED]

2. An illegible Order of Probation and Journal Entry & Order.
3. An Order of Probation in Case no. [REDACTED] which indicates that the applicant was charged and subsequently convicted of driving under the influence. The applicant was sentenced to serve 10 days in jail, ordered to pay a fine and was placed on probation for one year.
4. Certificates of Completion for substance abuse treatment.

Counsel asserts that the applicant has no other criminal record and he has completed a court directed rehabilitation program. However, the applicant's satisfactory completion of his court obligations does not eliminate his convictions.

Counsel asserts that the applicant was not informed of the immigration consequences associated with a guilty plea and that the convictions are subject to vacatur and pleas of not guilty may be entered.

Counsel, however, has not submitted any credible evidence to support his assertions. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Counsel asserts that the applicant was convicted of violating Nebraska code 36-115 and was sentenced to serve two days in jail in Case no. [REDACTED]. Counsel asserts that the applicant's plea agreement and subsequent sentence is not considered a misdemeanor because the maximum sentence imposed on the applicant for violating section 36-115 was two days, and therefore, the conviction did not rise to the level of a misdemeanor conviction under section 244 of the Act.

The court documents in number two above indicate that the applicant received a sentence of two days in jail, and was ordered to pay a fine of \$400.00 and placed on probation for one year. However, because the section of law and case number in the Order of Probation and Journal Entry & Order are illegible, it cannot be determined under what section of law the applicant pled guilty to<sup>1</sup> and if the court documents relate to Case no. [REDACTED].

The applicant has failed to provide legible court documentation revealing the final court disposition of his first arrest for driving under the influence. The applicant is ineligible for TPS because of his failure to provide adequate information necessary for the adjudication of his

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<sup>1</sup> A person convicted of violating a Class W misdemeanor (driving under the influence) would receive a mandatory minimum sentence of seven days in jail. Section 28.106 of the Nebraska Revised Statutes

application. 8 C.F.R. § 244.9(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.