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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
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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAR 29 2010**
[EAC 01 204 50343]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 TPS because it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant has not been convicted of two misdemeanors.

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).

"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 Intent to Withdraw TPS issued on March 3, 2009, the applicant submitted court dispositions from the Nassau and Suffolk Counties District Courts of New York, which revealed the following:

1. On September 6, 2003, the applicant was arrested and subsequently charged with two counts of violating VTL 1192.3.03, operating a motor vehicle under the influence of drugs or alcohol. On December 16, 2003, the applicant pled guilty to a misdemeanor charge of operating a motor vehicle under the influence of drug or alcohol. The remaining charge was dismissed.
2. The applicant was arrested and subsequently charged with violating VTL 511.2 02, aggravated unlicensed operator motor vehicle, a misdemeanor. The complaint was amended to a reduced charge of an infraction violating VTL 511A.1 01. On January 12, 2007, the applicant pled guilty to the infraction offense.

3. On April 3, 2007, the applicant was arrested and subsequently charged with violating VTL 511.2AII, aggravated unlicensed operator motor vehicle, a misdemeanor. The complaint was amended to a reduced charge of an infraction violating VTL 511A.1 01. On September 18, 2007, the applicant pled guilty to the infraction offense.

The evidence of record reflects that the applicant was convicted of only one misdemeanor offense, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and the application will be approved.

The denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the applicant's initial TPS application has been approved, the denial of the re-registration application will be withdrawn and also be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.