

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

NOV 17 2011

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M1

DATE: FEB 10 2012

Office: VERMONT SERVICE CENTER

FILE



IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT: Self-represented

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was granted 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 he had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits the requested court disposition.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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 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.

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.

On January 18, 2011, the director issued a notice requesting the applicant to submit certified judgment and conviction documents from the court for his arrest [REDACTED], by the Washington D.C. Police Department for possession of an open container and being a fugitive from justice.

It is noted that the notice was sent to the applicant's current address of record; however, it was returned by the U.S. Postal Service as undeliverable – insufficient address.

On appeal, the applicant submits:

- Certified court documentation in Case no [REDACTED] from the Superior Court of the District of Columbia, Criminal Division, for possession of open container of alcohol/public intoxication that occurred [REDACTED]. The disposition handed down on [REDACTED] 2009, is listed as “security forfeited.”¹
- Certified court documentation in Case no [REDACTED] from the Superior Court of the District of Columbia, Criminal Division, for possession of open container of alcohol in a vehicle that occurred [REDACTED]. The disposition handed down [REDACTED] is listed as “charge no papered.”²

The evidence of record reflects that the applicant has no misdemeanor or felony convictions under the related regulations in 8 C.F.R. § 244.4(a), and there are no other known grounds of ineligibility. Therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

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 met this burden.

ORDER: The appeal is sustained.

¹ Under the “post and forfeit” statute in the D.C. Code, a person arrested for traffic and other low-level offenses can post collateral and then choose to forfeit that collateral (which otherwise would serve as security upon release to ensure the arrestee’s appearance at trial) and thereby obtain a full and final resolution of the offense. The arrested person waives their right to trial, but avoids a conviction on their record.

² No follow up action was made after the initial charge was prepared - no prosecution.