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

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APR 17 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[LIN 01 170 51113]

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on April 17, 2001, under receipt number LIN 01 170 51113. The Director, Nebraska Service Center, approved that application on September 7, 2001.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

> *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.
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> *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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

(1) On October 28, 2002, the applicant was arrested by the Cherryhills Village, Colorado Police Department for "Driving Under Influence Liquor," "DUI," "DUI per se," "Defective Vehicle," "Lane Usage Violation," and "Speeding 10-19 over limit." (

(2) On March 9, 2004, the applicant was arrested by the Aurora, Colorado Police Department for "Battery Upon Person," and "Assault/Attempted Battery." (

(3) On September 20, 2004, the applicant was arrested by the Greenwood Village Police Department for "No Insurance Driver," "Driver's License-Permit Unauthorized Person," and "Registration- Fictitious Plate." (

(4) On October 20, 2004, the applicant was arrested by the Aurora, Colorado Police Department for "Battery Upon Person," and "Assault/Attempted Battery."

Pursuant to a letter dated June 28, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant provided the requested documents. According to the final court dispositions, on December 18, 2002, the applicant pled guilty and was convicted of "Driving While Impaired," a misdemeanor. In addition, on August 9, 2004, the applicant pled guilty and was convicted of "Battery Upon a Person," a misdemeanor; and, on February 3, 2005 the applicant pled guilty and was convicted of "Driver's License Permit Unauthorized Person," a traffic violation. All other charges against the applicant appear to have been dismissed.

The director withdrew the applicant's Temporary Protected Status because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel for the applicant claims that the applicant was only convicted of one misdemeanor. According to counsel, the offense of "Battery" is a violation of the municipal code of Aurora, Colorado, and not a misdemeanor. However, the court disposition provided by the applicant clearly shows he was sentenced to incarceration for a period of 30 days for this conviction. As cited above, for immigration purposes, a misdemeanor is any offense that "is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. Therefore, we conclude that the applicant's conviction for "Battery" above qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant has been convicted of two misdemeanor offenses and is ineligible for TPS pursuant to Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14. Therefore, the director's decision to withdraw TPS will be affirmed.

Furthermore, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

The application will be denied 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