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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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Services

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[REDACTED]

FILE:

[REDACTED]
[SRC 01 174 55399]

Office: VERMONT SERVICE CENTER

Date: AUG 04 2009

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 claims to be 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 9, 2001, under receipt number SRC 01 174 55399. The Director, Texas Service Center, approved that application on June 17, 2002.

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).

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

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.

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 8, 1996, the applicant was arrested by the Houston, Texas Police Department for "Escape from Custody."
- (2) On March 19, 2005, the applicant was arrested by the Houston, Texas Police Department for "Driving While Intoxicated."
- (3) On August 20, 2007, the applicant was arrested by the Houston, Texas Police Department for "Driving With License Invalid."

Pursuant to a letter dated July 23, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant provided the requested court documentation. According to the final court dispositions, on July 16, 1996, the applicant was found guilty of "Escape," a Class A misdemeanor; on May 16, 2005, the applicant pled guilty and was convicted of "Driving While Intoxicated," a Class B misdemeanor; and on September 18, 2007, the charge of "Driving While License Suspended" was dismissed.

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant claims that the applicant was only convicted of one misdemeanor because he was only sentenced to four days for the "Escape" conviction. However, the conviction is punishable by a term not to exceed one year imprisonment. 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.**" (emphasis added). As stated above, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. Therefore, these convictions are considered to be misdemeanors for TPS purposes.

The applicant is ineligible for TPS because of his misdemeanors convictions.

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. It is also noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. 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.