



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
[SRC 01 223 70036]

Office: VERMONT SERVICE CENTER

Date: MAR 03 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

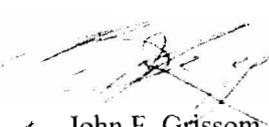
ON BEHALF OF APPLICANT:

[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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 May 25, 2001, under U.S. Citizenship and Immigration Services (USCIS) receipt number SRC 01 223 70036. The Director, Texas Service Center, approved that application on September 29, 2004.

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.

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

The record reveals the following offenses:

- (1) On January 22, 1994, the applicant was arrested by the Texas Highway Patrol for "Driving While Intoxicated."
- (2) On February 12, 2003, the applicant was arrested by the Texas Highway Patrol for "Driving While License Suspended." [REDACTED]
The applicant pled guilty to this misdemeanor on August 29, 2003.

- (3) On April 4, 2004, the applicant was arrested by the Texas Highway Patrol for "Driving While Intoxicated." [REDACTED]. The applicant pled guilty to this misdemeanor on August 25, 2004.

Pursuant to a letter dated October 1, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted court documents which indicated the applicant had been convicted of "Driving While License Suspended" and "Driving While Intoxicated."

The director withdrew temporary protected status because the applicant had been convicted of more than two misdemeanors in the United States.

On appeal, the applicant states that he is submitting the final court dispositions for the charges against him. The applicant requests that his case be reconsidered. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14. Therefore, the director's decision will be affirmed.

Beyond the decision of the director, 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. In addition, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by photo identification. The applicant has also failed to provide 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.