

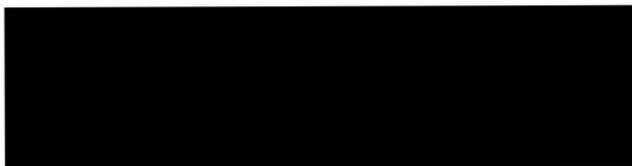
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 02 087 50992]
[EAC 08 235 51250 – APPEAL]

NOV 23 2009

IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



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).

Perry Rhew
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 director denied the application because he found the applicant had been convicted of two misdemeanors in the United States.

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.

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 May 31, 1997, the applicant was arrested by the Rockville, Maryland Police Department for "Poss CDS Marijuana" and Poss Para

2 Cts.” [REDACTED]). It appears the charges were dismissed.

- (2) On August 10, 1997, the applicant was arrested by the Baltimore, Maryland Police Department for “2nd Deg. Assault.” [REDACTED]
The final court disposition of this offense is not known.
- (3) On September 11, 1997, the applicant was convicted and placed on one year probation for “2nd Deg. Assault.”
- (4) On August 18, 1998, the applicant was arrested by the Landover, Maryland Police Department for “Assault 2nd Degree,” “Poss CDS Marj,” and “Disorderly in Public Place.” [REDACTED]
The final dispositions of these offenses are not known.
- (5) On March 22, 1999, the applicant was arrested by the Upper Marlboro, Maryland Sheriff’s Office for “FTA CDS Poss.” The final court disposition of this offense is not known.
- (6) On April 29, 1999, the applicant was convicted of “Grand Theft,” a misdemeanor. [REDACTED]
- (7) On June 3, 1999, the applicant was found guilty of “Disorderly Conduct,” a misdemeanor. [REDACTED]
- (8) On November 19, 1999, the applicant was convicted of “Driving While Suspended,” a misdemeanor. [REDACTED]
- (9) On July 20, 2007, the applicant was arrested by the Ellicott City [Maryland] Police Department for “Possession Marijuana.” [REDACTED]
[REDACTED] The record reveals the applicant pled guilty to this offense on November 29, 2007.

The director denied the application because the applicant had been convicted of two or more misdemeanors. On appeal, counsel claims that although the applicant was convicted of “Grand Theft and “Disorderly Conduct” those convictions were vacated. The applicant submits court documents to support this claim.

The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999), held that under the statutory definition of “conviction” provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 110(a)(48)(A), no effect is to be given the immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Additionally, Congress has

not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. As a result, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses. Consequently, the director's decision will be affirmed.

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. Here, the applicant has not met this burden.

ORDER: The appeal is dismissed.