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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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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: OCT 01 2009

[WAC 01 282 60613]

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).

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 record reveals that the applicant filed a TPS application during the initial registration period on September 12, 2001, under receipt number WAC 01 282 60613. The Director, California Service Center, approved that application on May 28, 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 a drug offense and was therefore inadmissible to the United States.

On appeal, counsel for the applicant states that the Maryland statute is not a violation of Section 102 of the Controlled Substance Act. Counsel also states the applicant did not possess a controlled dangerous substance, did not have an intent to distribute the same, did not manufacture nor did he distribute controlled dangerous substance.

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, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 Title 21). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On or about July 7, 2005, the applicant was arrested by the Montgomery County, Maryland Police Department and subsequently charged with controlled dangerous substance: possession of a controlled substance - not marijuana, carrying a concealed weapon and controlled dangerous substance: possession of a controlled substance -paraphernalia [REDACTED]

Pursuant to a notice dated February 6, 2008, the applicant was requested to submit the final court disposition for the arrest detailed above. Counsel, in response, provided the requested court document. According to the court disposition, on February 20, 2007, the applicant pled guilty to possession of paraphernalia, a violation of Maryland statute 5-619(c), a misdemeanor. A probation before judgment was entered and the applicant was ordered to pay a fine. *Nolle prosequi* was entered for the remaining charges.

The director withdrew temporary protected status because the applicant had been convicted of a drug offense and was therefore inadmissible to the United States.

On appeal, counsel claims that the term "paraphernalia" is not defined as a controlled substance pursuant to section 802(6) of the Controlled Substance Act and, therefore, the applicant was not convicted of a controlled substance violation.

In factoring whether an object is determined to be a drug paraphernalia, Maryland statute 5-619 (a) lists among other relevant factors to be considered: (1) any statement by an owner or a person in control of the object, concerning its use; (3) the proximity of the object, in time and space, to a direct violation or to a controlled dangerous substance; (4) a residue of a controlled dangerous substance on the object; (6) any instructions oral or written, provided with the object concerning its use; and (7) any descriptive materials accompanying the object that explain or depict its use.

As noted above, the applicant was arrested for possession of a controlled dangerous substance along with possession of drug paraphernalia. The applicant was convicted of possession of drug paraphernalia in violation of Maryland statute 5-619(c), which defines "drug paraphernalia" to mean use or possession with intent to use to:

- (i) plant, propagate, cultivate, grown, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal *a controlled dangerous substance*; or
- (ii) inject, ingest, inhale, or otherwise introduce into the human body *a controlled dangerous substance*.

[Emphasis added]

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of drug paraphernalia. There is no waiver available to an applicant found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

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.

Finally, the record reflects that a removal hearing was held on June 23, 1998, and the alien was granted voluntary departure from the United States on or before October 21, 1998.

ORDER: The appeal is dismissed.