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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:

[EAC 08 143 70042]

Office: VERMONT SERVICE CENTER

Date: OCT 01 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 application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office 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 more than two misdemeanors in the United States.

On appeal, counsel for the applicant states that one of the applicant's convictions has been vacated and a bench trial was scheduled on February 25, 2009.

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 October 2, 1992, the applicant was arrested by the Boston, Massachusetts Police Department for assault by a dangerous weapon, carrying a dangerous weapon, and armed assault with intent to rob.

- (2) On March 27, 1993, the applicant was arrested by the Cambridge, Massachusetts Police Department for assault by dangerous weapon. [REDACTED]
- (3) On July 1, 1993, the applicant was arrested by the Cambridge, Massachusetts Police Department for assault & battery with a deadly weapon and assault and battery. [REDACTED]
- (4) On May 24, 1999, the applicant was arrested by the Boston, Massachusetts Police Department for assault & battery. [REDACTED]
- (5) On July 24, 2000, the applicant was arrested by the Boston, Massachusetts Police Department for two counts of assault & battery. [REDACTED]
- (6) On October 4, 2005, the applicant was arrested by the Boston, Massachusetts Police Department for operating under the influence of alcohol, and armed breach of peace ([REDACTED])

United States Citizenship and Immigration Services (USCIS) records contain the final court dispositions for the arrests above. In regards to number one above, on March 31, 1993, all charges were dismissed for want of prosecution. For number two, on September 23, 1993, the charge was dismissed. For number three, on April 23, 1993, the applicant was found guilty of assault & battery with a deadly weapon, a violation of M.G.L. 265 section 15A, a misdemeanor, and was sentenced to serve nine months in jail. The remaining charge was dismissed. For number four, on September 9, 1999, the charges were dismissed. For number five, on December 7, 2000, the applicant was found not guilty of the charge. For number six, on November 28, 2005, the applicant was found guilty of operating under the influence of alcohol, a violation of M.G.L. 90 section 241(1)(a)(1), and negligent operation of a motor vehicle, a violation of M.G.L. 90 section 24(e), both misdemeanors.

The director denied the TPS application because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel asserts that a hearing has been scheduled in [REDACTED] on October 15, 2008 to determine its legality. Counsel subsequently submitted a certified court document, which reflects that the September 23, 1993 guilty finding had been vacated by the district court on January 21, 2009 with a bench trial set for February 25, 2009. However, more than seven months later, neither counsel nor the applicant has provided the final disposition of this case. Therefore, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

Furthermore, the applicant is ineligible for TPS because of his remaining misdemeanor convictions.

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.