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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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FILE:

[LIN 01 135 52147]

Office: VERMONT SERVICE CENTER

Date: **OCT 08 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: SELF-REPRESENTED

**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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 March 19, 2001, under receipt number LIN 01 135 52147. The Director, California Service Center, approved that application on August 9, 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 in the United States

On appeal, the applicant claims that he was not convicted of the misdemeanors and that maybe someone else is using his personal information and legal papers.

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 July 11, 1998, the applicant was arrested by the Aurora, Colorado Police Department for two counts of "Driving Under FRA Suspension," "Driving W/O Valid License," and "Driving W/O Proof of Insurance." [REDACTED]

(2) On December 17, 1998, the applicant was arrested by the Golden Colorado Police Department for "Contempt of Court" and "Fugitive Other Jurisdiction."

(3) On February 2, 2004, the applicant was arrested by the Denver, Colorado Police Department for "Theft 400-15000" and "Computer Crime-TheftT5 400-15000." [REDACTED]

(4) On June 20, 2005, the applicant was arrested by the Denver, Colorado Police Department for "Obstructing Gov. Operations." [REDACTED]

Pursuant to a letter dated March 19, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested documents. According to the final court dispositions, on August 11, 1998, the applicant was convicted of "Driving Under FRA Suspension," a misdemeanor (no. 1, above) and on June 21, 2005, the applicant was convicted of "DWAI," a misdemeanor (No. 4, above).

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

On appeal, the applicant claims that he did not commit the above mentioned crimes. According to the applicant, he has never been in California since 1994. According to the applicant, perhaps someone else used his personal information and legal papers. However, although the director incorrectly stated that the applicant was convicted in "California on June 21, 2005 for "DWAI", he was actually tried and convicted in Denver, Colorado. Therefore, these convictions were both for crimes committed in Colorado. Furthermore, the physical description, i.e. height, weight and eye color on the Federal Bureau Of Investigation Fingerprint Report matches the physical description on the applicant's

Colorado Driver License. Moreover, the convictions detailed above based on a Federal Bureau Of Investigation (FBI) Fingerprint search and on court documents provided by the applicant himself.

The applicant is ineligible for TPS because of his misdemeanors convictions. Therefore, the director's decision to withdraw TPS is affirmed.

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. 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.