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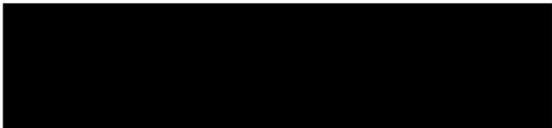
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **OCT 29 2009**
[LIN 01 162 51672]

IN RE: Applicant: [REDACTED]

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

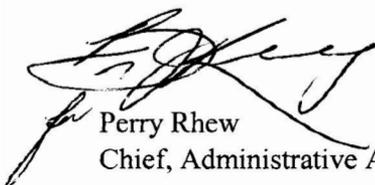
ON BEHALF OF APPLICANT:



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 claims to be a native and 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 failed to provide requested court documents necessary for the adjudication of his application.

On appeal, counsel reasserts the applicant's eligibility and submits some of the requested documents.

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.

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 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On September 27, 1994, the applicant was arrested in Los Angeles, California, for inflicting corporal injury on his spouse or cohabitant in violation of section 273.5 PC. It appears from the Federal Bureau of Investigation (FBI) criminal history printout that this charge was subsequently dismissed; however, actual court records for this offense have not been provided.
- (2) On May 13, 2000, the applicant was arrested under the name [REDACTED] by the Mount Holly [New Jersey] Township Police Department for possession of less than 50 grams of marijuana in violation of section 2C:35-10A(4) NJS. [REDACTED]. On May 1, 2008, the applicant was found guilty of this offense. The applicant satisfied the terms of his conditional discharge and the case was dismissed on May 7, 2009.
- (3) On May 13, 2000, the applicant was arrested under the name [REDACTED] by the Mount Holly [New Jersey] Township Police Department for unlicensed driving in violation of section 2C:39-3-10B NJS. [REDACTED]. On May 1, 2008, the applicant was found guilty of this offense.
- (4) On May 13, 2000, the applicant was arrested under the name [REDACTED] by the Mount Holly [New Jersey] Township Police Department for driving an unregistered vehicle ([REDACTED]) and for failure to possess an insurance card ([REDACTED]). The applicant was found guilty of these offenses on May 1, 2008.

On appeal, counsel asserts that the applicant has not been convicted of a felony or two or more misdemeanors and, therefore, is eligible for TPS. Specifically, counsel asserts that the charges detailed in Nos. 3 and 4 above constitute traffic infractions and not misdemeanors, leaving only the misdemeanor conviction detailed in No. 2 above.

The offenses detailed in No. 4 above are punishable only by a fine and do not carry any possibility of a sentence of incarceration. Therefore, counsel is correct in her assertion that these offenses do not constitute misdemeanors. However, the offense detailed in No. 3 above is punishable by up to 60 days of incarceration. Accordingly, this offense is considered a misdemeanor for immigration purposes pursuant to the definition of misdemeanor quoted above from 8 C.F.R. § 244.1.

Court documents provided by counsel reveal that the applicant satisfied the terms of his conditional discharge for the offense in No. 2 above and that the case was subsequently dismissed. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant remains convicted of this offense for immigration purposes.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in Nos. 2 and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under Section 212(a)(2)(A)(I)(II) of the Act due to his drug-related conviction detailed in No. 2 above. It is noted that inadmissibility under this section may be waived in cases that involve simple possession of 30 grams or less of marijuana; however, *Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988), holds that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or other evidence to meet his burden of proving that his conviction is related to 30 grams or less of marijuana. The applicant has provided no such testimony or evidence. Therefore, the application must also be denied due to his inadmissibility under Section 212(a)(2)(A)(I)(II) of the Act.

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.