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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
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FILE: [REDACTED]
[LIN 01 192 53354]

Office: VERMONT SERVICE CENTER

Date: OCT 30 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 office that originally decided your case. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 May 31, 2001, under receipt number LIN 01 192 53354. The Director, Nebraska Service Center, approved that application on March 18, 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 failed to submit evidence necessary for the proper adjudication of the application.

The applicant filed a Form I-821, Application for Temporary Protected Status, on October 23, 2007, and indicated that he was re-registering for TPS.

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.

The record reveals the following offenses:

- (1) On October 27, 1997, the applicant was arrested by the Lumberton, North Carolina Police Department for "Breaking and Entering Auto", "Larceny of Auto," and "Injury of Real Property." These charges were subsequently dismissed.
- (2) On October 12, 2001, the applicant was arrested by the Jacksonville, Illinois Sheriff's Office for "Permit Unauth Person to Drive" and "Resist Peace Officer." The applicant was convicted of this offense on November 26, 2001 and was fined \$120.
- (3) On February 8, 2005, the applicant was arrested by the Jacksonville, Illinois Sheriff's Office for "Reckless Driving." On June 13, 2005, the applicant pled guilty to the reduced charge of "Improper Traffic Lane Usage", and was placed on supervision and ordered to pay \$160.00 in fines.
- (4) On May 15, 2005, the applicant was arrested by the Jacksonville, Illinois Sheriff's Office for "Domestic Battery." On October 4, 2005, the applicant pled guilty to "Battery", a misdemeanor, and was placed on one year conditional discharge and ordered to pay \$410.00 in fines. On October 6, 2006, the conditional discharge was satisfied and the case was terminated.
- (5) On September 13, 2006, the applicant was arrested by the Jacksonville, Illinois Sheriff's Office for "Violate Order of Protection." On February 6, 2007, the court entered an order of Nolle Prosequi for the "Violate Order of Protection" charge.
- (6) On September 16, 2006, the applicant was arrested by the Jacksonville, Illinois Sheriff's Office for "Violate Order of Protection." On February 6, 2007, the court entered a plea of Nolle Prosequi for the "Violate Order of Protection" charge.

Pursuant to a letter dated February 29, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The director determined that the applicant failed to respond to the request.

The director withdrew temporary protected status because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, counsel for the applicant correctly states that the applicant timely responded to the request and provided the requested court dispositions. The applicant also resubmits the court dispositions. Those dispositions will be addressed here.

The “Battery” case (no. 3, above) was subsequently terminated. 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. *Matter of Roldan*. As a result, the applicant remains convicted, for immigration purposes, of this offense. The applicant is therefore ineligible for TPS because of his misdemeanor convictions.

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. It is also noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien’s country of origin bearing photo and/or fingerprint to establish his nationality and identity. 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