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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[WAC 02 268 53222]

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).

for John F. Grissom
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 August 27, 2002, under receipt number WAC 02 268 53222. The Director, California Service Center, approved that application on September 27, 2004.

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).

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 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 record reveals the following offenses:

(1) On July 9, 1996, the applicant was arrested by the Oakland, California Sheriff Office for "Trans/Sale/Dist.Contr. Subst," "Defraud Phone Co/Call Another," "Defraud Phone Company/Charge."

(2) On December 15, 2007, the applicant was arrested by the Oakland, California Sheriff Office for "DUI/Alcohol/Drugs."

Pursuant to a letter dated February 25, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documents. According to the final court dispositions, on September 9, 1996, the applicant was found guilty of "Defraud Phone Co/Call Another," and on March 5, 2008, the applicant pled "No Contest" and was found guilty of "DUI/Alcohol/Drugs," both misdemeanors.

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel for the applicant claims that only convictions that occurred during the TPS designated period are a bar to TPS. Therefore, according to counsel, the applicant only has one misdemeanor conviction. However, contrary to counsel's claim, the Act clearly states, as quoted by counsel, "An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that (i) the alien has been convicted of **any** felony or 2 or more misdemeanors committed in the United States. (Emphasis added) Based on this language, it is clear and unequivocal that the intent was to include any 2 misdemeanors or felony committed in the United States. No time frame is given or implied.

The applicant is ineligible for TPS because of his 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.