

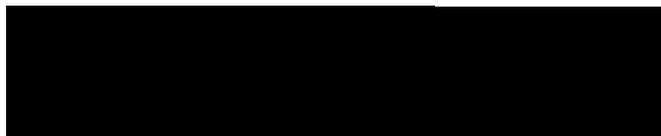
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services



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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 25 2009
[EAC 06 285 82065]

IN RE: Applicant: [REDACTED]

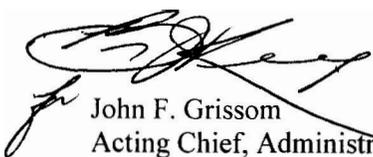
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was rejected as untimely by the director and considered as a motion to reopen pursuant to 8 C.F.R. § 103.5(a)(2). The motion was denied by Director, Vermont Service Center. The matter 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 director denied the application after determining the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his drug conviction.

On appeal from the denial of the motion to reopen issued on October 7, 2008, counsel for the applicant states that the director incorrectly determined that the marijuana offense was a ground of inadmissibility that could not be waived because it was a "drug offense" listed under section 212(a)(2)(C) of the Act. Counsel contends that the conviction was for simple possession of marijuana in an amount less than 30 grams, a misdemeanor offense waivable under 8 USC § 1254a(c)(2)(A)(iii)(I).

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 "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, 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 April 19, 1998, the applicant was arrested by the Fort Smith, Arkansas Police Department for "Viol Uniform Cont Substance Act" and "Delv, Poss, Manu, Etc Drug Paraphernalia." [REDACTED].

Pursuant to a notice dated March 11, 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 disposition, on June 23, 1998, the applicant pled guilty and was convicted of possession of marijuana, a violation of AC 5-64-214, a misdemeanor. The remaining charge was dismissed.

On June 3, 2008, the director withdrew temporary protected status because the applicant had been convicted of a misdemeanor drug offense and was therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, counsel states that the director incorrectly determined that the marijuana offense was a ground of inadmissibility that could not be waived because it was a drug offense listed under of section 212(a)(2)(C) of the Act.

Counsel's assertion has no merit as the director's decisions issued on June 3, 2008 and October 7, 2008, found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There was no mention of the applicant being inadmissible under section 212(a)(2)(C) of the Act.

Counsel contends that the conviction was for simple possession of marijuana in an amount less than 30 grams. However, without the police report or complaint/indictment indicating the amount of marijuana that was in the applicant's possession, the assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant is ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Consequently, the director's decision to withdraw temporary protected status will be 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. In addition, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. 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.