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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

[REDACTED]

MI

FILE: [REDACTED]
[EAC 01 119 51925]

Office: VERMONT SERVICE CENTER

Date:
SEP 25 2009

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. Grisson
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office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 April 30, 2001, under receipt number EAC 01 191 51925. The Director, Vermont Service Center, approved that application on October 7, 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 the applicant's TPS because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant states that he did not provide the requested court documentation for his arrest on January 13, 2005 because the charges had been dismissed. The applicant provides the missing final court disposition on appeal.

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.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The FBI report dated April 12, 2007, reveals the following offenses:

- (1) On December 24, 2002, the applicant was arrested by the Indianapolis, Indiana Police Department for "Oper Veh While Intox./Ma", and "Oper Vehicle W/Alcohol or Controlled Substance in Blood." [REDACTED]
- (2) On November 16, 2003, the applicant was arrested by the Indianapolis, Indiana Police Department for "Theft Receiving Stolen Property" and "Criminal Mischief". ([REDACTED]) [REDACTED]
- (3) On January 13, 2005, the applicant was arrested by the Indianapolis, Indiana Police Department for "Dealing in Cocaine or Narcotics" and "Possession of Cocaine." [REDACTED].
- (4) On May 5, 2006, the applicant was arrested by the Sheriff's Office in Indianapolis, Indiana for "Dealing Cocaine/FA."

On April 7, 2007, the director received a printout of the applicant's criminal history from the Justice Information System of Indianapolis/Marion County, Indianapolis Police Department, which reflected the applicant's arrests and dispositions in numbers one, two and three above. The applicant was convicted on February 24, 2003 for operating a vehicle while intoxicated for his arrest on December 24, 2002. The applicant was convicted on January 31, 2005 for theft, receiving stolen property for his arrest on November 16, 2003. For the applicant's arrest on January 13, 2005, the charges were dismissed. The printout also revealed an arrest that occurred on or about July 31, 2003 for operating a vehicle without a license. The charge, however, was dismissed on September 23, 2003.

Pursuant to a notice dated April 16, 2007, the applicant was requested to submit the final court dispositions for all arrests. The applicant provided the court disposition for the December 24, 2002 arrest which indicated the applicant had been convicted of "Oper Veh While Intox./MA", a misdemeanor on February 24, 2003. The applicant also provided the court disposition in Case [REDACTED], which reflects that an arrest occurred on or about July 31, 2003, for driving without a license. On September 23, 2003, the charge was dismissed.

The director withdrew temporary protected status because the applicant had failed to submit evidence, namely the final court disposition for his January 13, 2005 arrest necessary for the proper adjudication of the application.

On appeal, the applicant states that he did not provide the final court disposition for the January 13, 2005 arrest because the charges had been dismissed. The applicant provides the requested court dispositions for numbers two and three on appeal. The court disposition for number two indicates the applicant was convicted on January 31, 2005 for theft, receiving stolen property. The court disposition for number three indicates that the January 13, 2005 charges were dismissed.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest on May 5, 2006. The Notice of Intent to Deny clearly requested that the applicant submit the final court dispositions for "all other arrests."

The applicant is ineligible for TPS because of his misdemeanor convictions. In addition, the applicant is ineligible for TPS due to his failure to provide the final disposition for number four necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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.