

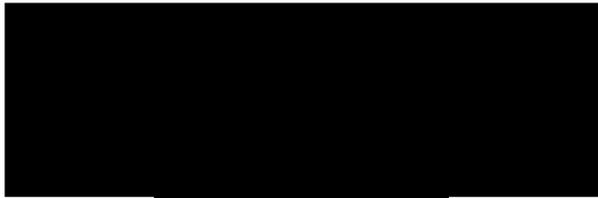
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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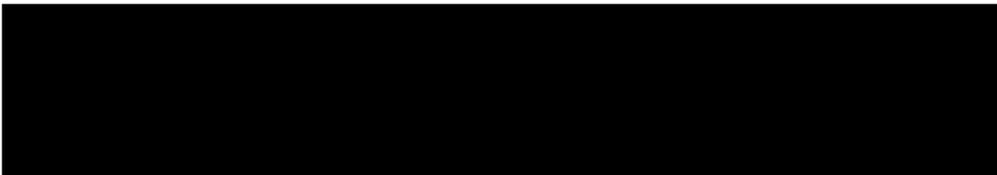
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IN RE: Applicant:



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

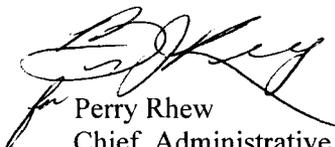
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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 or reopen, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 withdrew TPS because the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, counsel asserts that the applicant's misdemeanor convictions cannot count for immigration purposes as two of the misdemeanors are Class C and the maximum penalty for the remaining misdemeanor is a fine.

The director may withdraw the status of an alien granted TPS 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).

"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 FBI report reflects the following offenses in the state of Texas:

1. On April 7, 2007, the applicant was arrested by the Frisco Police Department for driving with license invalid.
2. On April 26, 2007, the applicant was arrested by the Frisco Police Department for driving with license invalid.
3. On June 17, 2007, the applicant was arrested by the Lewisville Police Department for driving with license invalid.

On April 7, 2009, a Notice of Intent to Withdraw TPS was issued, which requested the applicant to submit certified court documents for *all* arrests including the arrests noted above. The applicant, in response, submitted court documents, which revealed the following:

- On April 17, 2007, the applicant was arrested for driving while license is invalid, a violation of Texas Transportation Code section 521.457. On April 18, 2008, the

applicant was found guilty of this misdemeanor offense, and was ordered to pay a fine and serve 30 days in the Collin County jail. The confinement was suspended and the applicant was placed on community supervision for nine months.

- On June 16, 2007, the applicant was arrested for driving while license is suspended, a violation of Texas Transportation Code section 521.457, a Class C misdemeanor. On May 7, 2009, adjudication of guilt was deferred, and the applicant was placed on community supervision for a period of one year and ordered to pay a fine.
- On June 17, 2007, the applicant was arrested for subsequent fail/maintain financial responsibility. On September 22, 2007, the applicant pled guilty to the misdemeanor offense. The applicant was ordered to pay a fine.

Texas Penal Code, section 12.23, establishes that Class C misdemeanors in Texas are punishable by only fines not to exceed \$500.00. Therefore, the applicant's conviction on May 6, 2009, cannot be considered a misdemeanor for immigration purposes.

However, it is not clear if the applicant's conviction of April 18, 2008, is a Class C misdemeanor as the court document submitted clearly reflects that the court assessed a fine of \$100.00 and *30 days of confinement in the Collin County Jail*. No explanation from the court has been provided to resolve this contradiction.

In regards to the applicant's arrest on June 17, 2007, counsel asserts that the applicant was convicted of violating section 601.191 of the Texas Transportation Code, and that a conviction under this section does not carry any term of imprisonment. However, the court document from the Lewisville Municipal Court is silent to the section of law the applicant pled guilty to on September 22, 2007. Therefore, it is not known if the applicant was convicted of violating section 601.195 of the Texas Transportation Code,¹ which carries a maximum punishment of up to six months in jail or section 601.191 of the Texas Transportation Code, which is only punishable by a fine.

Finally, the applicant has failed to submit the requested court disposition for his arrest on April 26, 2007. Counsel asserts that this arrest resulted in a conviction of driving while license invalid in April 2007. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The applicant may have been convicted of another offense that would render him ineligible for TPS. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

¹ Section 601.195. Operation of Motor Vehicle in Violation of Requirement to Establish Financial Responsibility.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest in number two above. The applicant has also failed to provide credible evidence that the convictions of September 22, 2007, and April 18, 2008, did not result in misdemeanor convictions for immigration purposes. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

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 from the withdrawal of the TPS application is dismissed.