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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
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: APR 01 2010

[EAC 01 253 52372]
[EAC 08 111 51554 -APPEAL]

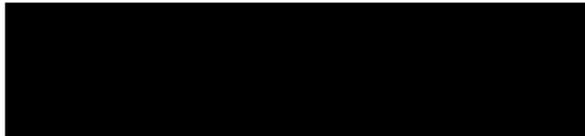
IN RE:

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, 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. A subsequent appeal was rejected by the Director, Administrative Appeals Office (AAO). The case was subsequently reopened and denied again by the Director, Vermont Service Center. The matter is again before the AAO on appeal. The previous decision of the AAO will be affirmed, and 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 the applicant's TPS after determining that the applicant had failed to submit requested court documentation relating to his criminal record.

On June 30, 2004, upon review of the record of proceeding, the AAO rejected the appeal because it was filed untimely.

The applicant filed a motion to reopen that was denied by the Director, Vermont Service Center on February 4, 2008 because the evidence submitted did not overcome the grounds for withdrawal

On appeal, counsel for the applicant reasserts the applicant's claim of eligibility for TPS and states that the applicant had never been convicted of any crime. However, the applicant failed to submit sufficient probative evidence to establish his eligibility 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 February 25, 1998, the applicant was arrested by the West New York TWP Police Department for "Possession/Use of CDS."

On appeal, counsel contends that the applicant entered into a conditional discharge program which he completed and therefore was never convicted of any crime. The AAO finds that an individual who is sentenced to conditional discharge is considered to have been convicted for immigration purposes unless and until that individual submits evidence that he or she satisfactorily completed probation, was discharged, and a judgment dismissing the charges against him was entered.

Although the certified disposition in Case No. 1 states that the applicant's received conditional discharge. However, the applicant has not submitted evidence that a judgment dismissing the charge was entered. Therefore, the applicant stands convicted of the "Possession/Use of CDS" charge.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The documentation submitted reflects that the applicant was found guilty of the offense and the judge ordered some form of punishment to the charge. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

The applicant's appeal consists of a statement from the applicant and resubmission of evidence previously provided. As such, the issue on which the underlying decisions were based has not been overcome on motion and the director's decision will be affirmed

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the appeal will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The appeal is dismissed. The previous decision of the director dated February 4, 2008, is affirmed.