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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:

DEC 09 2010

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: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, Vermont Service Center.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 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 because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant provides court documentation relating to some of his criminal record.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 Federal Bureau of Investigations reports reveal the applicant's criminal history in the state of New York as follows:



In response to the Notice of Intent to Withdraw TPS issued on May 22, 2006, which requested the certified court dispositions for the arrests above, the applicant asserted that he had a court appearance in July 2006 for his arrest in July 2005 and that he paid fines and did community services for cases in numbers two through five above. The applicant submitted court documentation for number one indicating that the case in no. [REDACTED] had been sealed as the applicant was adjudicated as a youthful offender.

The Board of Immigration Appeals, in *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), held that adjudication of youthful offender status or juvenile delinquency is not a conviction for immigration purposes). The applicant, therefore, was not convicted of the offense in number one.

The director determined that the applicant had failed to submit the remaining court dispositions necessary for the proper adjudication of the application and withdrew the applicant's TPS on November 17, 2006.

On appeal, the applicant asserts that he is providing the court dispositions for numbers two through six, which "were combined in the county courthouse. Everything just adds up to one felony as per 11/14/06." The applicant submits:

- For number two, court documentation indicating the applicant pled guilty to driving while ability impaired a violation of VTL 1192.1 an infraction. The applicant was ordered to pay a fine.
- For number three, court documentation indicating on May 3, 2005, the applicant was arrested under warrant. The applicant pled guilty on May 17, 2005, to driving while intoxicated, a violation of VTL 1192.3, a Class U misdemeanor. The applicant was ordered to pay a fine, his license was revoked and was placed on probation for three years.
- For number four, court documentation indicating on May 3, 2005, the applicant was arrested under warrant. The applicant pled guilty on May 17, 2005, to driving while intoxicated, a violation of VTL 1192.3, a Class U misdemeanor. The applicant was ordered to pay a fine, his license was revoked and was placed on probation for three years.

- For number five, court documentation indicating that the applicant was charged with driving while intoxicated – 2nd offense, a violation of VTL 1192.3(03), a Class E felony. On September 19, 2006, the applicant was convicted of this offense. On November 14, 2006, the applicant was ordered to pay a fine, perform ten days of community service work and was placed on five years probation.
- For number six, court documentation indicating the disposition or status was not found in Spring Valley's database as per the court clerk.

The applicant is ineligible for TPS due to his felony and two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw TPS will be affirmed.

An alien applying for TPS 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that a Form I-862, Notice to Appear, was issued and served on the applicant on April 13, 2010. A removal hearing was held on August 18, 2010, and the applicant was granted voluntary departure from the United States on or before September 17, 2010. No appeal appears to have been taken from the order of the immigration judge.

ORDER: The appeal from the withdrawal of the TPS application is dismissed.