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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

[REDACTED]

M,

FILE: [REDACTED] Office: Vermont Service Center Date: **DEC 10 2010**

IN RE: Applicant: [REDACTED]

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

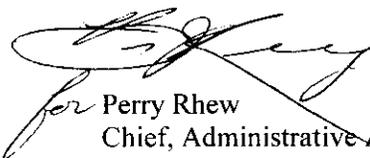
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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.

Thank you,


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The appeal will be sustained.

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, counsel submits the requested court disposition. Counsel also submits a brief disputing the director's decision.

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).

"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 Investigation (FBI) report reflects that on January 30, 2006, the applicant was arrested by the Denver Police Department of Colorado for making a false report and failure to appear.

In a notice dated June 4, 2010, the applicant was requested to submit the certified court disposition for his arrest on January 30, 2006. The applicant, in response, submitted a copy of his traffic ticket, driver's license, and employment authorization card. The applicant asserted that the Denver County Court did not have any record of his arrest and requested additional time to obtain the required documentation.

The director noted that the applicant did not submit any corroborating evidence from the Denver County Court to support his assertion. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on July 27, 2010.

Contrary to counsel's assertion, the director did not withdraw the applicant's TPS simply because the applicant had acknowledged that an incident had occurred in Denver, Colorado on January 30, 2006, or because the applicant had been convicted of the above offenses. The applicant's arrest was obtained via a fingerprint analysis from the FBI records. The applicant has the burden to establish, with *affirmative evidence*, that an outstanding arrest/charge was dismissed or was in error. As cited above, the director, in withdrawing the applicant's TPS, determined that the applicant had failed to provide information necessary for the adjudication of his application as required in 8 C.F.R. § 244.9(b).

Counsel, on appeal, provides the requested certified court document, which indicates that the applicant pled guilty to false information, a violation of CRS 38-40. Case no. C1162006M 947155.

The evidence of record reflects that the applicant's conviction for false information does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility, therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained.