

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

M

[REDACTED]

FILE:

[REDACTED]
[EAC 01 150 53005]

Office: VERMONT SERVICE CENTER

Date FEB 04 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:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 March 19, 2001, under receipt number EAC 01 150 53005. The Director, Vermont Service Center, approved that application on July 30, 2001.

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 temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that two of the offenses stem from one incident and should not be considered two separate offenses. Counsel also states that the third conviction is not a valid conviction. Counsel also states that he would submit a brief within 30 days.

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.

The record reveals the following offenses:

- (1) On June 2, 1999, the applicant was arrested by the Revere [Massachusetts] Police Department for "OUI-Liquor" and "Unlicensed Operation of MV." [REDACTED]
- (2) On June 2, 1999, the applicant was arrested by the Revere [Massachusetts] Police Department for "Leave Scene of Property Damage." [REDACTED]
- (3) On September 9, 2007, the applicant was arrested by the Boston [Massachusetts] Police Department for "Destruction of Property +250, Malicious" and "Disorderly Conduct." [REDACTED]

Pursuant to a notice dated January 20, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documents. According to the final court dispositions: On August 4, 1999, the applicant pled guilty to "OUI-Liquor," a misdemeanor; on December 3, 1999, the applicant pled guilty to "Leave Scene of Property Damage," a misdemeanor; and, on October 30, 2007, the applicant admitted to sufficient facts for "Destruction of Property +250, Malicious" and "Disorderly Conduct," both misdemeanors.

The director withdrew temporary protected status because the applicant had been convicted of two or more misdemeanors.

On appeal, counsel for the applicant states that the June 2, 1999 offenses stem from one incident and should not be considered two separate offenses. Counsel also states that the third conviction is not a valid conviction because of procedural flaws. Counsel also states that he would submit a brief within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

The fact that the offenses in Nos. 1 and 2 above arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (the Act), this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines

the term “count” to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term “count” is used to signify the part of an indictment charging a distinct offense. According to the court disposition, the applicant was charged with two separate violations and was assigned two separate docket numbers in which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses in Nos. 1 and 2 above.

The applicant has offered no evidence to support his claim that the October 30, 2007 conviction was not a valid conviction because of procedural flaws. The assertions of counsel have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above.

The applicant is, therefore, ineligible for TPS because of his misdemeanors convictions. 8 C.F.R. § 244.4(a). Accordingly, the director’s decision to withdraw TPS is 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 is dismissed.