



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[LIN 01 132 50430]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 April 15, 2001, under receipt number LIN 01 132 50430. The Director, Nebraska Service Center, approved that application on June 5, 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 more than two misdemeanors.

On appeal, counsel for the applicant states that the applicant is able to overcome the grounds for withdrawal and requests 30 days in which to submit a brief. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

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 3, 2002, the applicant was arrested by the Omaha, [Nebraska] Police Department for "Operating a Motor Vehicle to Avoid Arrest." [REDACTED]
- (2) On July 1, 2003, the applicant was arrested by the Omaha, [Nebraska] Police Department for "DUI Prior Conv." [REDACTED]
- (3) On December 14, 2007, the applicant was arrested by the Omaha, [Nebraska] Police Department for "Driving Under Influence of Liquor - 3rd." [REDACTED]

Pursuant to a notice dated January 12, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documentation. According to the court dispositions, on November 3, 2003 the applicant was convicted of "DUI - no prior conviction," and "DUI - 1 prior conviction," both misdemeanors; and on August 20, 2008, the applicant was convicted of "Driving While Intoxicated - Third Offense," a misdemeanor.

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

On appeal, counsel states that the applicant is able to overcome the grounds for withdrawal and requests 30 days in which to submit a brief. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete. The applicant has failed to provide any evidence to overcome the basis for the director's decision to deny the application.

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.