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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



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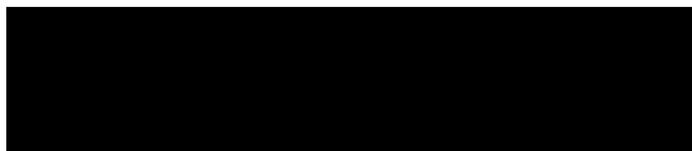
FEB 23 2010

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
[WAC 01 171 55799]

IN RE: Applicant: [REDACTED]

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

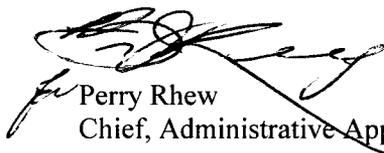
ON BEHALF OF APPLICANT:



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 or reopen, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office 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 record reveals that the applicant filed a TPS application during the initial registration period on October 8, 2001, and said application was approved by the Director, California Service Center.

The director withdrew the applicant's TPS because he had been convicted of at least two misdemeanors in the United States.

On appeal, counsel asserted that the final judgment for the applicant's driving without a license fails to indicate the specific section under which he was found guilty, and therefore, the lesser crime must be considered in this situation. Counsel asserted that the applicant was convicted of an administrative and not a misdemeanor statute for violating the salt water fish regulations. Counsel asserted that a brief and/or evidence would be submitted within 30 days. However, more than eight months later, no additional correspondence has been presented by counsel.

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. 8 C.F.R. § 244.14(a)(1).

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).

"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 FBI report dated January 21, 2009, reveals that on November 26, 2007, the applicant was arrested by the Sheriff's Office in Collier County Florida for driving without a license, a violation of statute 322.03(1), a 2nd degree misdemeanor, and failure to appear for four counts of violating salt water fish regulations, a violation of statute 843.15(1)(b), a 1st degree misdemeanor.

In response to a Notice of Intent to Withdraw TPS issued on January 26, 2009, the applicant submitted the requested court dispositions, which revealed he pled no contest to each count of violating salt water fish regulations, a violation of statute 370.021(1)(a). On November 27,

2007, the applicant was found guilty on all counts and was ordered to pay a fine. [REDACTED]

The penalty upon a first conviction of violating Fla. statute 370.021(1)(a) is by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 not more than \$500, or by both such fine and imprisonment.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

In the instant case, the court documents submitted reflect that the applicant was found guilty of each offense of violating Fla. statute 370.021(1)(a), and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of the misdemeanor offenses for immigration purposes.

The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with four separate counts and he pled to separate offenses. *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. Therefore, the applicant has been convicted of four separate and distinct offenses.

Counsel's assertion that the final judgment for the charge of driving without a license fails to indicate the specific section is without merit. In response to the Notice of Intent to Withdraw TPS, the applicant submitted the court documentation, which revealed that on November 27, 2007, the applicant was found guilty of violating statute 322.03.(1), a 2nd degree misdemeanor. [REDACTED]

The applicant is ineligible for TPS due to his five misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS will be 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 approval of the TPS application is withdrawn. The appeal from the withdrawal of the TPS application is dismissed.