

**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<sub>1</sub>

**JAN 28 2010**

FILE:

[SRC 01 221 63326]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

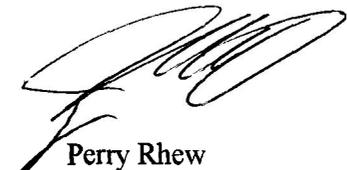
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 May 2 2001, under receipt number SRC 01 221 63326. The Director, California Service Center, approved that application on October 31, 2003.

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 the application was erroneously denied.

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 January 31, 2006, the applicant was arrested by the Springdale [Arkansas] Police Department for "Forgery" and "Financial Identity Fraud." [REDACTED]
- (2) On April 3, 2006, the applicant was arrested by the Springdale [Arkansas] Police Department for "Failure to Appear." [REDACTED]
- (3) On April 4, 2006, the applicant was arrested by the Springdale [Arkansas] Police Department for "Endanger Welfare Incompetent – 1<sup>st</sup> Degree." [REDACTED]

Pursuant to a notice dated January 15, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested documents. According to the final court dispositions, on June 21, 2006, a Motion for Nolle Prosequi was granted for the charge detailed in No. 1 above; on November 20, 2006, a Motion for Nolle Prosequi was granted for the charge detailed in No. 3 above; on April 3, 2006, the applicant was convicted of two misdemeanor counts of "Endanger Welfare of Minor," stemming from an arrest on May 13, 2005 [REDACTED]; and on May 9, 2006, the applicant was found guilty of "Failure to Appear," a misdemeanor.

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

On appeal, counsel claims that the applicant was erroneously denied. According to counsel, the two charges of "Endanger Welfare of a Minor" were merged into one count and he has requested a letter from the Court explaining that these two charges were merged. Counsel also states that the Motion for Nolle Prosequi was granted for the "Failure to Appear" charge was based on an "Obstruction of Justice" or "Driving Without Insurance" charges that were later dropped or nolle prosequi and that he had contacted the Court for the nature of the Failure to Appear and the disposition of the underlying charge. To date, neither counsel nor the applicant has provided any correspondence from the courts regarding the misdemeanor conviction. Therefore, the record must be considered complete.

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

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.