

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

M1

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 06 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen..

Thank you,

[Redacted Signature]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 29, 2001. The Director, California Service Center, approved that application on February 12, 2003.

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).

The director withdrew the applicant's TPS because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, the applicant states that the convictions may have been misdemeanors under state law, but they may not have been misdemeanors under immigration laws.

An alien shall not be eligible for TPS 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 "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 August 4, 2007, the applicant was arrested by the Los Angeles, California Police Department for "DUI Alcohol/Drugs." [REDACTED]

- (2) On August 15, 2008, the applicant was arrested by the Los Angeles, California Police Department for, "DUI Alcohol/Drugs." [REDACTED]

Pursuant to a notice dated April 8, 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 September 6, 2007, the applicant was found guilty and convicted of violating VC Section 23152(b), "DUI Bac .08 or Higher," and on October 31, 2008, the applicant was found guilty and convicted of violating VC Section 23152(b), "DUI Bac .08 or Higher," both misdemeanors.

The applicant also submitted court dispositions, which reflect that on December 1, 2008, the applicant pled *nolo contendere* and was convicted of violating VC section 14601.5(a), "Driving with a Suspended/Revoked License" and VC Section 12500(a), "Driving with a Valid License," both misdemeanors. [REDACTED]

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant states that the convictions may have been misdemeanors under state law, but they may not have been misdemeanors under immigration laws. However, as cited above, for immigration purposes, a misdemeanor is any offense that "is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, the offenses in number one and two are punishable by imprisonment of not more than six months. Section 23536 of the California Vehicle Code. Therefore, we conclude that the applicant's convictions above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is, therefore, ineligible for TPS because he had two or more misdemeanors convictions in the United States. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS is affirmed.

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 failed to meet this burden.

ORDER: The appeal is dismissed.