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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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 09 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:

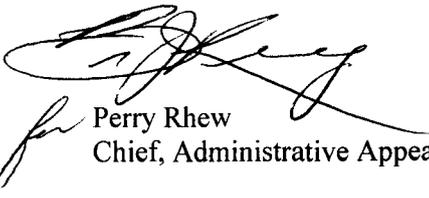
[Redacted]

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 office that originally decided your case. 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 office that originally decided your case 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 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 September 4, 2002. The Director, Vermont Service Center, approved that application on March 30, 2005.

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 TPS because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that the applicant was convicted of traffic offenses and not misdemeanors.

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 FBI report dated March 30, 2009, reveals the following offenses:

- (1) On October 14, 2006, the applicant was arrested by the Prince William County Police Department of Virginia for driving while intoxicated, 2nd offense in five to ten years and driving while intoxicated, refusal of test, 2nd driving while intoxicated conviction in ten years. (Docket # [REDACTED])

- (2) On June 12, 2008, the applicant was arrested by the Fairfax County Police Department of Virginia for driving after forfeiture of license." (Docket # [REDACTED])

Pursuant to a notice dated April 14, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit the final court disposition for his first driving while intoxicated conviction. The applicant submitted the requested court documents. According to the final court dispositions, on February 20, 2007, the applicant pled guilty and was convicted of violating Virginia Code section 18.2-66/18:2-270, driving a motor vehicle while intoxicated with .08 percent or more alcohol, a Class 1 misdemeanor. The applicant was ordered to pay a \$500.00 fine, and sentenced to serve 300 days in jail of which 10 were mandatory minimum. On September 18, 2008, the applicant pled guilty and was convicted of violating Virginia Code section 46.2-301, driving while license, permit, or privilege to drive is suspended or revoked, a Class 1 misdemeanor. The applicant was sentenced to serve 180 days in jail of which 160 days were suspended and his driver's license was suspended for 90 days.

The director determined that because the applicant had been charged with a second offense of driving while intoxicated it appeared that the applicant's initial offense occurred prior to October 14, 2006. The director noted that the applicant had failed to submit the request court disposition for his initial driving while intoxicated offense. On March 4, 2010, the director withdrew the applicant's TPS because the applicant had been convicted of at least two misdemeanors.

On appeal, counsel submits a criminal history record information request from the Vienna Police Department of Virginia for the applicant's initial driving while intoxicated offense. The documentation reflects that the applicant was arrested on June 25, 1995, for driving while intoxicated. On December 18, 1995, the applicant pled guilty to the charge, and he was sentenced to serve 30 days in jail and ordered to attend an alcohol treatment program and pay a fine.

Counsel's assertion that the applicant was only convicted of traffic offenses is without merit. Any person violating any provision of Virginia Code section 18.2-266 shall be guilty of a Class 1 misdemeanor. *See* Virginia Code section 18.2-270. A violation of subsection B of Virginia Code section 46.2-301 is a Class 1 misdemeanor. *See* Virginia Code section 46.2-301(C). The punishment for a Class 1 misdemeanor conviction is confinement in jail not to exceed 12 months and/or a fine not to exceed \$2,500. *See* Virginia Code section 18.2-11. Therefore, we conclude that the applicant's convictions qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

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 the applicant's 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.