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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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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 14 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:

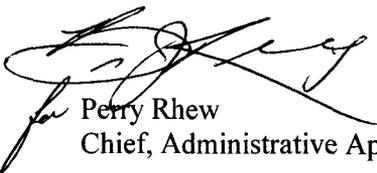


INSTRUCTIONS:

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,


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) 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 director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserted, "there is no rational basis for treating [the applicant] differently than a similarly situated TPS applicant who has been convicted of an almost identical New York trespassing violation." To support his argument counsel cited a Memorandum for Service Center Operations and the AAO dated January 17, 2010, regarding the adjudication of New York traffic infractions and violations. Counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. However, more than four months later, no additional correspondence has been presented by either counsel or the applicant.

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 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).

"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 reflects that on February 17, 2006, the applicant was arrested by the Sheriff's Department in Eagle County, Colorado for driving under the influence, a violation of C.R.S. 42-4-1301(1)(a) and driving under the influence with access alcohol content, a violation of C.R.S. 42-4-1301(2)(a). On May 5, 2006, the applicant pled guilty to violating C.R.S. 42-4-1301(1)(a), a misdemeanor. The remaining charge was dismissed.

The record also reflects that on February 18, 2008, the applicant was arrested by the Sheriff's Department in Eagle County, Colorado for third degree criminal trespass, a violation of C.R.S. 18-4-504(1). On March 21, 2008, the applicant pled guilty to the charge. The applicant paid a misdemeanor fine plus court cost.

New York Penal Law defines "trespassing" to be a violation. *See* New York Penal Law § 140.05. Violations committed in the State of New York are not considered "crimes" under state law, and do not constitute misdemeanors or felonies. *See* New York Penal Law § 10.00(3) and (6). However, criminal trespassing in the third degree is classified as a Class B misdemeanor, which carries a sentence up to 90 days in jail. *See* New York Penal Law §§ 140.10, 70.15.

In the instant case, a crime of third degree criminal trespass (a similar offense) is classified as a Class 1 petty offense. *See* C.R.S. 18-4-504(2). The penalty for a Class 1 petty offense is a fine not to exceed \$500.00, or imprisonment not to exceed six months, or both. *See* C.R.S. 18-1.3-503.

Consequently, the applicant's conviction of crime of third degree criminal trespass is a misdemeanor as defined in 8 C.F.R. § 244.1. The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two misdemeanor convictions committed in the United States. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.. Accordingly the director's decision to withdraw TPS will be 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.