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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: JUN 02 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 denied the application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that because the two convictions were part of the same incident, they should not be considered to be separate convictions. Counsel indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days. However, more than 60 days later, no additional correspondence has been presented by either counsel or the applicant.

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 April 20, 2007, reflects that on August 24, 2001, the applicant was arrested by the California Highway Patrol in Riverside for driving under the influence of alcohol.

On April 24, 2007, the director issued a Notice of Intent to Deny, which requested the applicant to submit the final court dispositions of every charge against him. The applicant, in response, submitted court documentation from the Riverside County Superior Court, which reflects that on September 11, 2001, the applicant was charged with violating section 23152(a) VC, driving under the influence, section 23152(b) VC, driving with .08 percent or more alcohol in the blood, and section 12500(a) VC, driving without a license. On October 2, 2001, the applicant pled guilty to violating sections 23152(b)VC and 12500(a) VC, both misdemeanors. The remaining charge was dismissed. [REDACTED]

Counsel's assertion that the offenses arose in a single occasion and, therefore, the applicant was convicted of a single misdemeanor offense, cannot be accepted. 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 two separate counts and he pled guilty 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 two separate and distinct offenses.

On appeal, counsel asserts that the conviction of section 12500(a)VC should have been charged as an infraction.

This argument should have been raised in the appropriate appellate court. The AAO does not have authority to look beyond the record of conviction when determining an applicant's eligibility for TPS.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Finally, the record reflects that on January 26, 2007, a Form I-862, Notice to Appear, was issued. The applicant was scheduled to appear for a master hearing before the Immigration Court on January 15, 2010; however, the applicant's presence was waived.

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.