

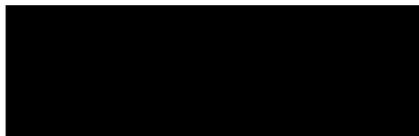
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M₁

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: JUN 04 2010

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:

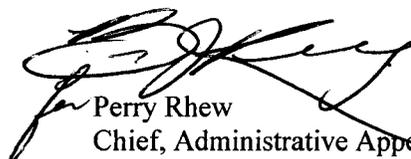


INSTRUCTIONS:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 at least two misdemeanors in the United States.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction. Counsel contends that remaining convictions are traffic violations, which do not meet the definition of a felony or misdemeanor as "they are not crimes."

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.

In response to the Notice of Intent to Withdraw TPS issued on April 15, 2009, which requested the applicant to submit the final court disposition for every charge against him, the applicant submitted court dispositions from the Los Angeles County Municipal Court of California, which revealed the following:

1. On April 3, 1996, the applicant pled *nolo contendere* to violating section 23152(a) VC, driving under the influence, and section 417(a)(1) PC, exhibiting deadly weapon other than firearm, both misdemeanors. For violating section 23152(a) VC, the applicant was placed on probation for three years on the condition he serve 96 hours in jail, enroll in a first offender alcohol and drug program and pay a fine or serve 13 days in jail. The applicant subsequently violated his probation and on May 17, 2000, the applicant was sentenced to serve 13 days in jail. For violating section 417(a)(1) PC, the applicant was placed on probation for three years on condition he serve 30 days in jail. [REDACTED]

2. On May 19, 2000, the applicant plead *nolo contendere* to violating section 14601.5(a) VC, driving while license is suspended or revoked, a misdemeanor. The applicant was placed on probation for three years on condition he serve seven days in jail. [REDACTED]

The director, in withdrawing the applicant's TPS, determined that the applicant had been convicted of at least two misdemeanors in the United States and, therefore, he was ineligible for the benefit sought. The director also noted that the applicant had failed to submit the court disposition for his arrest by the Sheriff's Office in Norwalk, California on May 13, 2000, for violating two misdemeanor offenses (driving under the influence and failure to appear) and an infraction (use of shoulder/etc. pass right).

Counsel, on appeal, asserts that the notices were neither personally delivered nor mailed certified or registered pursuant to 8 C.F.R. § 103.5a(a). Counsel's assertion has no merit as the regulation also provides that notices can be mailed by *routine service*.¹ Consequently, the record clearly establishes that the notices were properly served on the applicant and counsel in compliance with 8 C.F.R. § 103.5a(a)(1).

Counsel asserts that the disposition for the applicant's May 13, 2000, arrest was not available. Counsel, however, provides no plausible explanation why the court dispositions for the offenses are not available. The applicant has the burden to establish, with *affirmative evidence*, that outstanding charges were dismissed or were in error. A statement made by counsel is not affirmative evidence and fails to meet the applicant's burden.

Section 40000.11 of the California Vehicle Code states that a violation of section 14601, relating to driving when suspended, "is a misdemeanor, and not an infraction." Additionally, section 40000.15 of the California Vehicle Code states that a violation of any provisions of section 23152, relating to driving under the influence, "is a misdemeanor, and not an infraction."

Section 42002 of the California Vehicle Code provides unless a different penalty is expressly provided by this code, every person convicted of a misdemeanor shall be punished by a fine of not exceeding one thousand dollars (\$1000) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment,

Because the applicant was convicted of crimes for which he could have received jail sentences of more than five days, he has, for immigration purposes, been convicted of the two misdemeanors detailed above.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also ineligible for TPS because of his failure to provide the court disposition for his May 13, 2000, arrest necessary for

¹ Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be 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 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.