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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

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 25 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:

Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 record reveals that the applicant filed a TPS application during the initial registration period on November 16, 2001. The Director, California Service Center, approved that application on February 17, 2004.

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 failed to submit requested court documentation relating to his criminal record.

On appeal the applicant states that he has only one misdemeanor conviction.

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 December 13, 2006, the applicant was arrested by the French Camp, California Sheriff's Office for "DUI, Alcohol/Drugs." (Docket

- (2) On October 19, 2007, the applicant was arrested by the French Camp, California Sheriff's Office for "DUI Alcohol/0.08 Percent."

Pursuant to a notice dated July 6, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to respond to the notice.

The director withdrew TPS because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, the applicant claims that he has only one misdemeanor conviction. The applicant submits the requested court document for the December 13, 2006 arrest. According to final court disposition, on January 8, 2007, the applicant was convicted of violating California Vehicle Code Section 23152(B), "DUI Alcohol/0.08 Percent," a misdemeanor. The applicant also submits a Certificate of Clerk-Statement of No Record from the Superior Court of California County of Los Angeles indicating no record was found in regards to the October 19, 2007 arrest. A Federal Bureau of Investigation fingerprint results report indicates the applicant was, in fact, arrested on October 19, 2007. The applicant, therefore, has the burden to establish, with **affirmative evidence** that the outstanding charge was dismissed or was in error. A letter from the court indicating that no record was disclosed is not affirmative evidence and fails to meet the applicant's burden. Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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.