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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  
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MAR 03 2010

FILE:

[REDACTED]  
[EAC 08 169 70030]

Office: VERMONT SERVICE CENTER

Date:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that the applicant had only been convicted of traffic violations and not misdemeanors. Counsel requests that the director's decision be reversed.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a 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 in Ohio:

- (1) On November 16, 2001, the applicant was arrested in Columbus for "VALID OPS/EXP OPS." [REDACTED]. The applicant was

subsequently convicted of an amended charge of "FAIL TO DISPLAY PLT."

- (2) On September 16, 2004, the applicant was arrested by the Columbus [Ohio] Police Office for "No Operators License." [REDACTED]

The applicant pled guilty to this misdemeanor on October 6, 2004.

- (3) On December 9, 2004, the applicant was arrested by the Columbus [Ohio] Police Office for "No Operators License." [REDACTED]

[REDACTED] Court documents provided by the applicant confirm he was found guilty of this misdemeanor.

- (4) On April 12, 2007, the applicant was arrested by the Franklin County [Ohio] Sheriff's Office for "No Operators License." [REDACTED]

[REDACTED] The applicant pled guilty to this misdemeanor on May 29, 2007.

- (5) On July 26, 2007, the applicant was arrested by the by the Perry Township [Ohio] Police Office for "No Operators License." [REDACTED]

[REDACTED]. Court documents provided by the applicant confirm he pled guilty to this misdemeanor.

- (6) On August 3, 2007, the applicant was arrested in Columbus for aggravated menacing. [REDACTED]

This charge was subsequently dismissed at the request of the Prosecuting Attorney.

- (7) On September 9, 2007, the applicant was arrested in Columbus for driving under the influence. [REDACTED]

The final disposition of this offense is not known.

- (8) On October 27, 2007, the applicant was arrested by the Franklin County [Ohio] Sheriff's Office for "Driving Under Suspension." [REDACTED]

[REDACTED]. The applicant pled guilty to this misdemeanor on October 30, 2007.

- (9) On an undisclosed date, the applicant was arrested by the Franklin County [Ohio] Sheriff's Office for "No Operators License." [REDACTED]

[REDACTED] The applicant pled guilty to this misdemeanor on May 29, 2007.

The director denied the TPS application because the applicant has been convicted of two or more misdemeanors.

On appeal, counsel claims that the applicant has only been convicted of traffic violations and not misdemeanors. However, Ohio statutes specifically state that the applicant's offenses were misdemeanors ranging from fourth degree to a first degree misdemeanors. As such, these convictions are punishable by terms of no more than thirty days to one hundred eight days, respectively. As stated above, any crime punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, shall be considered a misdemeanor. Therefore, these convictions are considered to be misdemeanors for TPS purposes.

The applicant is, therefore, ineligible for TPS because of his record of at least six misdemeanor convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS is affirmed.

An alien applying for temporary protected status 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.