



U.S. Citizenship
and Immigration
Services

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[REDACTED]

MAR 03 2010

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[LIN 02 012 51402]

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:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 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 September 11, 2001. The Director, Nebraska Service Center, approved that application on December 17, 2001.

The director may withdraw the status of an alien granted Temporary Protected Status 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 temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that the applicant remains eligible for TPS because she was convicted of only one misdemeanor.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On July 3, 2006, the applicant was arrested by the Westminster, Colorado Police Department for "Assault and Battery," "Crimes Against Person", and "Harassment."
- (2) On January 6, 2006, the applicant was arrested by the Colorado State Police Department for "Fugitive Other Jurisdiction - Traffic."
- (3) On February 6, 2008, the applicant was arrested by the Thornton, Colorado Police Department for "Driving Under Restraint/Suspended and Fugitive."
- (4) On May 13, 2008, the applicant was arrested for "Failure to Appear."

Pursuant to a notice dated March 2, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documents. According to the court dispositions, on April 9, 2008 the applicant was convicted under [REDACTED] in the Denver County Court of "Driving Under Restraint," a misdemeanor, and on August 7, 2008, the applicant was convicted under [REDACTED] in the Arapahoe County Justice Center of "Registration-Fictitious Plate," a misdemeanor. In addition, court records previously submitted by the applicant indicate that on August 28, 2006, the applicant was convicted under [REDACTED] in the Westminster Municipal Court of "Battery," a misdemeanor.

The director withdrew temporary protected status because the applicant had been convicted of more than two misdemeanors.

On appeal, counsel states that the April 9, 2008 and August 7, 2008 convictions were for traffic offenses and therefore do not equate to convictions for misdemeanors. However, the court records confirm that the applicant was charged with, and convicted of, misdemeanor offenses. In this case, Colorado law provides that the applicant's offenses are punishable by up to six months and 12 months incarceration, respectively. Therefore, we conclude that the applicant's convictions above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of at least three misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS will be 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.