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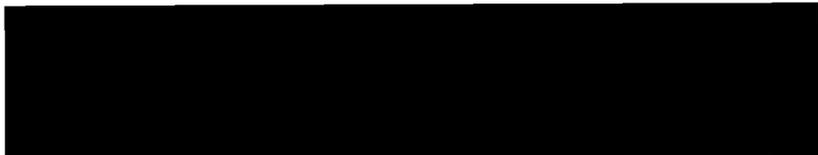
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 17 2010

FILE:



Office: VERMONT SERVICE CENTER

Date:

[WAC 01 296 54776]

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:

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 or reopen, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. 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 the applicant's TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that a brief will be submitted once he receives the Notice of Withdrawal of the applicant's TPS. Counsel asserts that he only received a Notice of Denial of the applicant's Form I-765.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for temporary protected status 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. 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 January 16, 2009, reflects the applicant's criminal history in the states of California and Texas as follows:

1. On October 10, 1996, the applicant was arrested by the Los Angeles Police Department for hit and run causing property damage.
2. On March 8, 2002, the applicant was arrested by the Sheriff's Office in Norwalk for probation violation.
3. On April 26, 2008, the applicant was arrested by Tomball Police Department for driving while intoxicated.

In response to the Notice of Intent to Withdraw TPS issued on January 20, 2009, counsel submitted:

- Court documentation from the Harris County District Court of Texas, indicating the applicant was charged with driving while intoxicated, a violation of section 49.04 PC, a Class B misdemeanor. On April 29, 2008 the applicant pled guilty and was sentenced to serve ten days in jail. [REDACTED]
- Court documentation from the Los Angeles County Municipal Court of California, indicating the applicant was charged on September 12, 1996, with driving without a license, a violation of section 12500(a) VC, and hit and run causing property damage, a violation of section 20002(a) VC. On October 10, 1996, the applicant pled guilty to violating section 20002(a) VC. The applicant was placed on summary probation for a period of two years and ordered to pay a fine. The remaining charge was dismissed. The applicant subsequently violated his probation and on March 8, 2002, the probation was modified to include the applicant to serve 30 days in the county jail. [REDACTED]

On appeal, counsel asserts that he did not receive the Notice of Withdrawal of TPS. The record, however, reflects that the Notice of Denial of the Form I-765 and the Notice of Withdrawal of TPS, both dated July 13, 2009, were sent to counsel at his address of record. The record contains no evidence that the Notice of Withdrawal of TPS was returned by the post office as undeliverable. Further, counsel indicated on the timely filed Form I-290B, Notice of Appeal, he was appealing the decision of the Form I-821 and listed the receipt number of said form. It is noted that on August 10, 2009, a courtesy copy of the Notice of Withdrawal of TPS was sent to the applicant's address of record. In response, the applicant requested that his application be reconsidered because he has not been arrested since his last arrest and he has a family to support.

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). The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw 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 from the withdrawal of the TPS application is dismissed.