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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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FILE: [REDACTED]
[WAC 02 260 51537]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 24 2010**

IN RE: Applicant: [REDACTED]

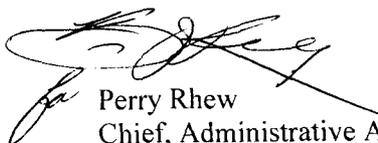
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[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 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court dispositions.

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 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).

"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, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

On appeal, counsel submits court documentation from the Orange County Superior Court of California, which reveals the following:

1. On September 10, 2004, the applicant was arrested for unlawful use of a controlled substance, a violation of section 11550(a) H&S, and possession of a controlled substance- paraphernalia, a violation of section 11364 H&S, both misdemeanors. On September 13, 2004, the applicant pled guilty to both offenses. Entry of judgment was deferred and the applicant was ordered to enroll in a drug program. On September 22, 2006, the guilty pleas were withdrawn, judgment was vacated and the charges were dismissed pursuant to section 1000 PC. [REDACTED]

2. On February 6, 2007, the applicant was arrested for possession of a controlled substance - paraphernalia, a violation of section 11364 H&S, a misdemeanor. On April 12, 2007, the applicant pled guilty to the offense. Imposition of sentence was suspended and the applicant was placed on probation for three years and ordered to pay a fine and complete a drug treatment program. The applicant subsequently violated his probation and on February 26, 2008, was ordered to serve 30 days in the county jail. [REDACTED]
3. On December 16, 2007, the applicant was arrested for two counts of hit and run causing property damage, a violation of section 20002(a) VC, both misdemeanors. On February 26, 2008, the applicant pled guilty to one count of violating section 20002(a) VC. The applicant was sentenced to serve ten days jail, ordered to pay a fine and was placed on probation for three years. [REDACTED]

The applicant is ineligible for TPS due to his two misdemeanor convictions in numbers two and three above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction in number two 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 TPS is dismissed.