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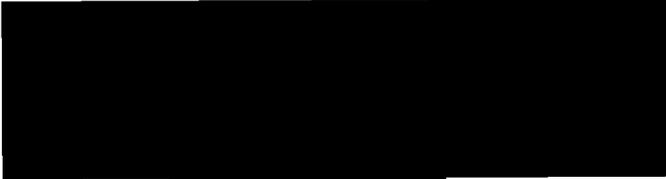
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAR 29 2010**
[WAC 01 174 50712]

IN RE: Applicant: [REDACTED]

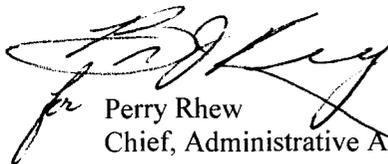
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant requests that his application be reconsidered as he only received probation for his battery conviction, and served one day in jail for his driving under the influence conviction.

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.

The FBI report dated March 12, 2008, reflects the applicant's criminal history in the state of California as follows:

1. On November 19, 2005, the applicant was arrested by the Bakersfield Sheriff's Department for driving under the influence, driving with .08 percent or more alcohol in the blood and driving without a license.
2. On July 16, 2007, the applicant was arrested by the Bakersfield Sheriff's Department for sexual battery/sexual arousal, and annoy a child under the age of 18.

In response to the Notice of Intent to Withdraw TPS issued on March 18, 2008, the applicant submitted the requested court dispositions which revealed the following:

- The applicant was charged with violating section 23152(a) VC, driving under the influence, and section 12500(a) VC, driving without a license, both misdemeanors. On December 13, 2005, the applicant pled *nolo contendere* to the charge of driving

under the influence. Imposition of sentence was suspended and the applicant was placed on probation for three years, ordered to pay a fine and serve seven days in jail. The remaining charged was dismissed. [REDACTED]

- The applicant was charged with violating section 647.6 PC, annoy/molest a child under the age of 18, and section 243(a) PC, battery. On January 4, 2008, the applicant pled *nolo contendere* to the misdemeanor battery charge. Imposition of sentence was suspended and the applicant was placed on probation for three years, ordered to pay a fine and serve three days in jail. The remaining charge was dismissed. [REDACTED]

The applicant's compliance with a court order does not alleviate the applicant of any convictions that have occurred. 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). 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 is dismissed.