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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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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: MAR 30 2010

[SRC 02 036 57372]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 TPS because the applicant was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, counsel asserts that the applicant was convicted of a Class A misdemeanor, and does not have any other charges in his criminal record.

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.

The record reflects that on December 30, 2007, the applicant was arrested by the Jacinto City Police Department of Texas for possession of a controlled substance – cocaine, a felony. The applicant was subsequently charged with violating a Class A misdemeanor pursuant to 12.44(b) PC.¹ On April 4, 2008, the applicant pled guilty to the lesser charge. The applicant was sentenced to serve 30 days in the county jail and ordered to pay court costs. [REDACTED]

¹ At the request of the prosecuting attorney, the court may authorize the prosecuting attorney to prosecute a state jail felony as a Class A misdemeanor.

Counsel, on appeal, appears to imply that because the applicant is not applying for admission into the United States or as a permanent resident, the grounds of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act does not apply to him.

Counsel's assertion, however, has no merit. The regulation at 8 C.F.R. § 244.3(c) clearly states that an individual who has been convicted of any controlled substance is inadmissible to the United States under section 212(a)(2)(A)(i) of the Act, and the grounds of inadmissibility may not be waived.

Likewise, section 244(c)(2)(A)(iii)(II) of the Act provides that the Attorney General² may not waive an individual's inadmissibility relating to drug offenses *except* for a single offense of simple possession of 30 grams or less of marijuana.

In the instant case, the applicant was convicted of possessing cocaine, not marijuana and, therefore, he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. There is no waiver available for inadmissibility under this section of the Act. 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.

² Now the Secretary of the Department of Homeland Security.