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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] OFFICE: VERMONT SERVICE CENTER DATE: **MAR 30 2010**
[EAC 01 194 55398]

IN RE: Applicant: [REDACTED]

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

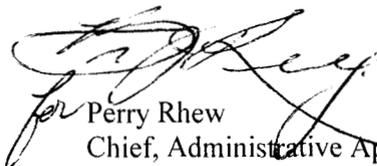
ON BEHALF OF APPLICANT:



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).


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 had been convicted of two of more misdemeanors and a felony in the United States.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction as his convictions of illegal possession of a weapon in a motor vehicle are neither a felony nor misdemeanor "because the sentence was not ordered to serve any jail time." Counsel asserts that the applicant's conviction of illegal possession of a weapon in a motor vehicle was treated as a misdemeanor under the exception clause.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 May 7, 2009, reveals the following offenses in the states of Massachusetts and Connecticut:

- On March 19, 1999, the applicant was arrested by the Boston Police Department of Massachusetts for operating without a license and receiving stolen goods.

- On May 8, 2004, the applicant was arrested by the East Hartford Police Department of Connecticut for weapons in vehicle, and driving under the influence.
- On August 29, 2006, the applicant was arrested by the East Hartford Police Department for failure to appear.
- On May 17, 2008, the applicant was arrested by the Hartford Police Department of Connecticut for disorderly conduct.

The record contains court documentation which reveals the following:

1. On March 19, 1999, the applicant was arrested and subsequently charged with violating code 266 section 60(a), receive stolen property, code 90 section 10(a), unlicensed operation of a motor vehicle, and code 90 section 24 possess/use false/stolen property. On March 22, 2009, all charges were dismissed. [REDACTED]
2. On May 8, 2004, the applicant was arrested and subsequently charged with violating CGS section 29-38, illegal weapons in motor vehicle, an unclassified felony. On August 18, 2006, the applicant was arrested and subsequently charged with CGS section 53a-172, failure to appear in the 1st degree, a felony. On March 7, 2007, the applicant pled guilty to illegal weapons in motor vehicle and was ordered to pay a fine and was placed on probation. A *nolle prosequi* was entered for the remaining charge. [REDACTED]
3. On July 29, 2004, the applicant was arrested by the Manchester Police Department of Connecticut and subsequently charged with violating section 14-227(a), driving under the influence, and Town Ordinance 7-148. On January 20, 2006, the driving under the influence charge was dismissed and a *nolle prosequi* was entered for the remaining charge. [REDACTED] and [REDACTED]
4. On January 24, 2005, the applicant was arrested in Hartford, Connecticut for violating CGS section 14-12(a), operating an unregistered motor vehicle and CGS section 14-215(c), driving while license or registration is suspended, revoke or refused. On November 23, 2005, the applicant was found guilty of driving while license or registration is suspended, revoke or refused and was sentenced to serve 40 days in jail and ordered to pay a fine. A *nolle prosequi* was entered for the remaining charge. [REDACTED]
5. On May 17, 2008, the applicant was arrested and subsequently charged with violating CGS section 53a-182, disorderly conduct, a Class C misdemeanor, and CGS section 53(a)-223, violation of protective order, a Class D felony.

6. On November 6, 2008, the applicant was arrested and subsequently charged with violating CGS section 53a-61, assault in the 3rd degree, a Class A misdemeanor. On March 11, 2009, the applicant pled guilty to the charge. The applicant was sentenced to serve one year in jail, execution was suspended and the applicant was placed on probation for one year. [REDACTED]

On March 26, 2009, the director issued a Notice of Intent to Withdraw TPS, which requested the applicant to submit a certified court disposition for his arrest on May 17, 2008. In response, the applicant submitted court documentation in [REDACTED] which revealed that the applicant had been charged with violating CGS section 53a-182, disorderly conduct, a Class C misdemeanor, and CGS section 53a-223, violation of protective order, a Class D felony. The documentation indicated that the case was pending with a court date scheduled on July 28, 2009.

Counsel's assertion, on appeal, that the applicant has only one misdemeanor conviction is not supported by the record.

In number six above, the applicant was convicted of violating a Class A misdemeanor. The punishment for violating a Class A misdemeanor is a sentence of imprisonment not to exceed one year. *See Connecticut General Statute section 53a-36.* As noted above, for immigration purposes, a misdemeanor is any offense that "is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.* Consequently, the conviction in number six is considered a misdemeanor for immigration purposes.

In regards to number two above, Connecticut General Statute section 29-38(a) provides, in pertinent part:

Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued as provided in section 29-28 ... shall be fined not more than one thousand dollars or imprisoned not more than five years or both.

The regulation at 8 C.F.R. § 244.1 clearly defines a felony as:

A crime committed in the United States punishable by imprisonment for a term of more than one year, *regardless of the term 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.*

[Emphasis added]

A review of the court documentation provided by the applicant does not reflect that the State had defined the charge in number two as a misdemeanor. Because the Connecticut court could have

sentenced the applicant to up to five years in jail for violating CGS section 29.38, it is concluded that this conviction is considered to be a felony for immigration purposes. Assuming, arguendo, the offense was defined by the State as a misdemeanor, the applicant would have an additional misdemeanor conviction for immigration purposes.

The applicant is ineligible for TPS due to his one felony and two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also ineligible for TPS because of his failure to provide evidence revealing the final court disposition of his May 17, 2008 arrest necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.