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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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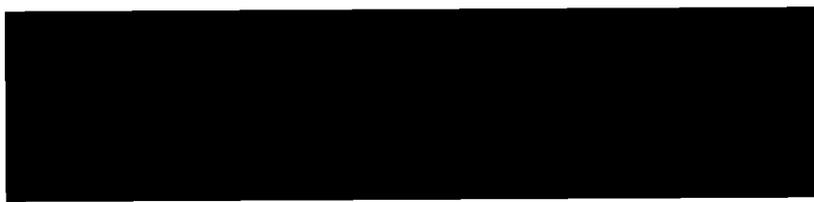
Office: VERMONT SERVICE CENTER

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, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period on March 26, 2002. The Director, Texas Service Center, approved that application on September 18, 2002.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The director withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that the conviction may be proved only with certified court disposition and that the submitted letter indicates that the record had been destroyed.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien 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.

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 record reveals the following offenses:

- (1) On November 17, 1996, the applicant was arrested by the DeKalb County, Georgia Police Department for "Driving Under the Influence of Alcohol" in violation of section 40-6-391 OCGA, for operating a motor vehicle without proof of effective insurance in violation of section 40-6-10 OCGA and for unlicensed driving in violation of section 40-5-20 OCGA. [REDACTED] The applicant pled guilty to these misdemeanors on February 4, 1997, and was placed on probation for a period of 12 months.
- (2) On February 7, 1999, the applicant was arrested by the Gwinnett County, Georgia Police Department for "Driving Under the Influence of Alcohol." The final court disposition for this offense is not known.

Pursuant to a notice dated March 25, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant failed to submit the requested court documentation for the arrest detailed in No. 2, above. The applicant did submit a copy of a letter from the Recorder's Court of Gwinnett County. According to that letter, "The Gwinnett County Recorder's Court does not keep records of disposed citations once all court requirements have been met and the citation reaches the required retention period."

The director withdrew temporary protected status because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, counsel claims that a criminal conviction may be proved only with certified court dispositions. According to counsel, as long as Gwinnett County Recorder's Court does not have record of the applicant's charge, the conviction cannot be proved or disproved by the alien. While the court's letter indicates that records are not kept of disposed citations once all court requirements have been met, the destruction of court records is not evidence that conviction(s) had been dismissed.

The applicant, however, has the burden to establish, with **affirmative evidence**, that outstanding charges were dismissed or were in error. Letters from the courts indicating that records have been destroyed or could not be located is not affirmative evidence and fails to meet the applicant's burden. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Moreover, beyond the decision of the director, the court records provided by the applicant for the offenses in No. 1, above, reveal that the applicant pled guilty to three misdemeanor offenses. The applicant is, therefore, ineligible for TPS because of these misdemeanors convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS is affirmed for this additional reason.

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.