

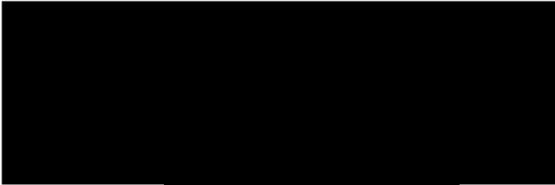
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 04 2010**
[SRC 01 161 59345]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 asserts that the director's decision is unjust and with prejudice as "the law is more than not clear that when one has been convicted of two or more misdemeanors or a felon, one should not nor ought to be approved for a benefit of a TPS."

"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.

In response to the Notice of Intent to Withdraw TPS issued on April 30, 2009, the applicant submitted the requested court documents, which revealed the following:

- On September 28, 2004, the applicant was arrested for driving while license invalid. The applicant was charged with a lesser offense of no driver's license, a violation of Texas Penal Code section 521.025, a Class C misdemeanor. On May 12, 2005, the applicant pled guilty to this misdemeanor offense. The court accepted the applicant's plea, granted deferred entry of judgment for a period of six months, and ordered the applicant to pay a fine of \$200.00. [REDACTED]
- On October 16, 2004, the applicant was arrested for prostitution, a violation of Texas Penal Code section 43.02, a Class B misdemeanor. On December 13, 2006, the applicant was convicted of this offense. The applicant was placed on community supervision for nine months and was ordered to pay a fine. [REDACTED]
- On July 10, 2006, the applicant was arrested for public lewdness, a violation of Texas Penal Code section 21.07, a Class A misdemeanor. On November 19, 2007, the applicant was convicted of this offense. The applicant was placed on community supervision for one year and was ordered to pay a fine. [REDACTED]

Texas Penal Code, section 12.23, establishes that Class C misdemeanors in Texas are only punishable by fines not to exceed \$500.00. Therefore, the applicant's conviction on May 12, 2005, cannot be considered a misdemeanor for immigration purposes.

The applicant's assertion on appeal that the law is not clear of the consequences of being convicted of two or more misdemeanors is without merit.

The law specifically states that an alien shall not be eligible for TPS 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).

Furthermore, the regulation at 8 C.F.R. § 244.14(a)(1) provides that 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.

In regards to his arrests on October 16, 2004 and July 10, 2006, the applicant, on appeal, asserts, "I practically was tricked by the district attorney and the public defender in which they scared me by telling me that if I did not plead to one or more of their charges, that I would spend many years in jail."

The AAO, however, is not the proper forum to determine constitutional issues involving an applicant's conviction. Rather, those issues are within the jurisdiction of the judicial court. The AAO may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to his two misdemeanor convictions (December 13, 2006 and November 19, 2007). Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated 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 is dismissed.