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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]
[EAC 02 003 53633]

Office: VERMONT SERVICE CENTER

Date: **MAY 05 2010**

IN RE: Applicant: [REDACTED]

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

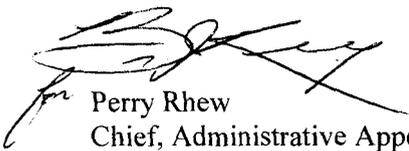
ON BEHALF OF APPLICANT:



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, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The AAO will return the matter for further action by the director.

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 September 6, 2001. The Director, Vermont Service Center, approved that application on July 13, 2004.

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).

The director withdrew the applicant's TPS 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 applicant does not have two misdemeanor convictions and he is therefore eligible for TPS.

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 applicant answered yes to Part 4, item 2d on his TPS application. On March 31, 2009, pursuant to a notice dated March 31, 2009, the applicant was requested to submit the final court disposition for any arrests against him. The applicant submitted a notice from the Commonwealth of Virginia, a cover letter, and an addendum to Part 4, item 2d, on which he indicated that he had been arrested for driving while intoxicated in 1994. The notice from Virginia indicates that a search of its archives revealed that the applicant's case of driving while intoxicated in 1994 had been destroyed in accordance with Virginia Code section 16.1-69.57. The director determined the fact that physical records had been destroyed did not mean the applicant was not convicted, that a conviction was dismissed or vacated on its own merits, or that no electronic records remain.

The applicant noted on his addendum application that he was only convicted of one misdemeanor; driving while intoxicated. The director determined that the applicant's notation on the addendum application contradicted his cover letter. The applicant indicated in his letter that at the time of his court hearing, his license was restricted for one year. The applicant stated that he was subsequently apprehended while driving on the restricted license and as such the restriction was extended for another year. Therefore, the director determined that the applicant could possibly have two misdemeanor convictions. The director concluded that the applicant failed to submit the requested judgment and conviction documents for any charge against him.

On July 14, 2009, the director withdrew the applicant's TPS because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, counsel claims that the applicant does not have two misdemeanor convictions against him. Counsel asserts that the Virginia courts issue *capias* charges for violations of sentence, and is not considered a second charge.

It is unclear why the director waited eight years to request information regarding the applicant's 1994 arrest. The applicant has made a good faith effort to obtain the records for his apparent one misdemeanor offense. In this case, it does not appear that the applicant "willfully" failed to provide the requested court documentation. Therefore, the director's decision to withdraw the applicant's TPS, will, itself, be withdrawn.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has met this burden.

The record does not reflect any grounds that would bar the applicant from receiving TPS. As there are no other known grounds of ineligibility; the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The applicant's appeal is sustained and the matter is returned for further action by the director.