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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:



[SRC 01 164 61767]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 06 2010**

IN RE:

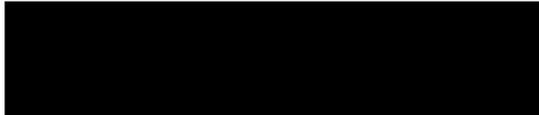
Applicant:



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 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the director has determined that the applicant's arrest of driving without a valid license resulted in a conviction. Counsel argues that it is an unjustified and overwhelming burden to conclude that the applicant "has the burden of proof to show a negative, something which does not exist, a conviction directly attributable to him."

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.

The record contains certified court documents relating to a driving while intoxicated charge on October 3, 2005. On January 10, 2006, the applicant pled guilty to violating Texas Penal Code section 49.04 PC, a Class B. misdemeanor. The applicant was sentenced to serve 150 days in jail, ordered to pay a fine and placed on probation for two years. [REDACTED]

The Federal Bureau of Investigation (FBI) report dated March 21, 2009, reveals that on June 5, 2006, the applicant was arrested by the Department of Public Safety in Heath, Texas for driving with license invalid. On April 13, 2007, the applicant was convicted of this offense and sentenced to serve three days in jail and ordered to pay a fine. [REDACTED]

In response to the Notice of Intent to Withdraw TPS issued on August 27, 2009, which requested the certified court disposition for the arrest on June 5, 2006, counsel provided the court disposition for the driving while intoxicated conviction. Counsel asserted that the arrest for driving with an invalid license is an offense perpetrated by the applicant's brother. Counsel

submitted documentation from the District Clerk of Dallas County Criminal Court, who indicated that court indexes had been searched and the court was unable to locate any charges or convictions filed against the applicant during and including the years of 1973 through September 3, 2009.

As previously noted by the director in his Notice of Withdrawal, the applicant's arrest of June 5, 2006, was obtained via a *fingerprint analysis* from the FBI records. Furthermore, the court document from the District Clerk of Dallas County Criminal Court has no probative value as the arrest occurred in Rockwall County and was referred to the Rockwall County District Attorney. No evidence from the Rockwall County District Attorney and/or the Rockwall County Court has been provided to refute the FBI results

Contrary to counsel's assertions, the director is not treating the arrest of driving while license invalid as a conviction, and is not associating this arrest with another individual.¹ The applicant has the burden to establish, with *affirmative evidence*, that an outstanding arrest/charge was dismissed or was in error. The director determined that the applicant had failed to provide information necessary for the adjudication of his application as required in 8 C.F.R. § 244.9(b). 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.

¹ Another individual's record of proceeding was erroneously consolidated into the applicant's A-file and several charges relating to that individual were thought to have belonged to the applicant. The two files were deconsolidated in 2007.