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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
and Immigration
Services

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MAY 12 2010

FILE:

Office: VERMONT SERVICE CENTER

Date:

[EAC 02 274 52952]

IN RE:

Applicant:

APPLICATION:

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

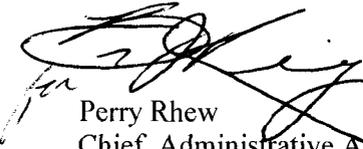
ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The application 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 denied the application because he found the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel states that the applicant has been convicted of two misdemeanors and is required to comply with three years of probation. According to counsel, in order to comply with the sentence, he needs to work and therefore needs his employment authorization card.

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 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).

The regulation at 8 C.F.R. § 244.1 defines "misdemeanor" as 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.

The record reveals the following offenses:

- (1) On April 24, 1999, the applicant was arrested by the Mineola, New York Police Department for "Operating Motor Vehicle .10 of 1% Alcohol." [REDACTED]
- (2) On August 5, 2006, the applicant was arrested by the North Hempstead, New York Police Department for "Aggravated Unlicensed Operator." [REDACTED]

Pursuant to a notice dated February 22, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant, in response, provided the requested court documents. According to the final court dispositions, on June 1, 1999, the applicant was convicted of "Operating Vehicle – Ability impaired by Alcohol," a violation of VTL 1192.1, and on September 11, 2007, the applicant was convicted of "Operate Motor Vehicle with .08 of 1% Alcohol, a violation of VTL 1192.2, and "Aggravated Unlicensed Operate Motor Vehicle, 2nd Degree," a violation of VTL 511.2.

The director withdrew the applicant's TPS on July 29, 2008, after determining that the applicant was ineligible pursuant to section 244(c)(2)(B)(i) of the Act, based on his misdemeanor convictions.

The issue to be addressed is whether New York offenses considered to be "violations" should constitute disqualifying convictions for "misdemeanors" in determining TPS eligibility under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4.

Violations committed in the State of New York are not considered "crimes" under state law, do not constitute misdemeanors or felonies, and may not be punished by more than 15 days of imprisonment. *See* New York Penal Law § 10.00(3), (4) and (6).

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services has determined that New York violations should not be considered disqualifying misdemeanors.

Driving while ability impaired (VTL 1192.1) is classified as a violation by the state of New York. Therefore, this offense will be not considered a disqualifying misdemeanor for immigration purposes. Nevertheless, the applicant has two remaining offenses which are classified as misdemeanors by the state of New York.

On appeal, counsel claims that the applicant is required to work in order to comply with his probation as sentenced by the Judge. Counsel requests that for humanitarian reasons and in the interest of justice, the case be reinstated and his application be processed so that he can receive his work authorization card. Counsel's statements made on appeal have been considered. However, there is no waiver available, even for humanitarian reasons, of the requirements stated above.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.