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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:

[REDACTED]  
[SRC 01 175 56264]

Office: VERMONT SERVICE CENTER

Date:

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:  
[REDACTED]

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 April 9, 2001. The Director, Texas Service Center, approved that application on March 4, 2003.

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 because he failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that the applicant attempted to submit the requested court documentation; however, the only evidence available is the Yuma County Court certification indicating that no evidence exists.

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. 8 C.F.R. § 244.1.

The FBI report dated January 8, 2008, reveals that on or about July 10, 1995, the applicant was arrested by the Yuma Police Department of Arizona for selling liquor to a minor, contempt of

court, and failure to appear. The FBI report reveals that the applicant was convicted of selling liquor to a minor, a violation of ARS 4-241, and interfering with judicial proceedings, a violation of ARS 13-2810, both misdemeanors.

Pursuant to a notice dated January 11, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant, in response, submitted documents from the Justice Court Clerk and Justice of the Peace of the 1<sup>st</sup> Precinct, County of Yuma, State of Arizona, indicating that the court records from 1970 to 2000 were destroyed pursuant to Administrative Order no. 91-12, Supreme Court Rule 70; all criminal complaints and traffic DUI tickets are destroyed five years after the final disposition.

On October 23, 2008, 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 submits a copy of the police report from the Yuma Police department pertaining to the applicant's arrest on July 9, 1995 along with copies of documents that were previously submitted in response to the notice of January 11, 2008. Counsel asserts that the applicant attempted to submit the requested court documentation; however, "such evidence simply does not exist."

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. As noted above, the FBI report indicates that the applicant was convicted of two misdemeanors. None of the court documents submitted provides sufficient explanatory information to enable the AAO to determine whether the convictions listed in the FBI report are in error. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. Accordingly, the director's decision to withdraw TPS is affirmed.

An alien applying for TPS 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.