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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



M1

DATE: DEC 08 2011

Office: VERMONT SERVICE CENTER

FILE:

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: Self-represented

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 Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits court documents relating to his arrests on January 15, 2006 and January 26, 2007.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Federal Bureau of Investigation report dated March 11, 2009, reveals the following offenses in the state of Georgia:

1. On November 24, 2002, the applicant was arrested by the Gwinnett County Police Department for driving under the influence.
2. On January 15, 2006, the applicant was arrested by Lilburn Police Department for driving under the influence.
3. On March 31, 2006, the applicant was arrested by the Gwinnett County Sheriff's Office for driving under the influence.

In response to a notice dated July 3, 2003, the applicant submitted the court documentation for number one above. The court documentation indicates that on January 3, 2003, the applicant pled guilty to violating Georgia Code section 40-6-391(a)(1), driving under the influence of alcohol, a misdemeanor. The applicant was ordered to serve time in jail, pay a fine and was placed on probation for one year. Case no. [REDACTED]

On August 5, 2009, a notice was issued which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant was granted 33 days to respond; however, he failed to respond to the notice. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on January 19, 2010.

On appeal, the applicant submits:

- For number two, court documentation in Citation no. [REDACTED] which indicates that on March 27, 2006, the applicant pled guilty to violating Georgia Code section 40-6-391(a)(1), driving under the influence of alcohol, a misdemeanor. The applicant was ordered to serve time in jail, pay a fine and was placed on probation for one year.
- Court documentation in Case no. [REDACTED] which indicates that on March 8, 2007, the applicant pled *nolo contendere* to violating Georgia Code section 40-5-121, driving while license is suspended, a misdemeanor.

The applicant, however, has failed to submit the final court disposition for his arrest on March 31, 2006. The court documentation in Case no. [REDACTED] indicates that the applicant's arrest occurred on January 26, 2007. The applicant has not provided any credible documentation from court indicating that the arrest on March 31, 2006, relates to the arrest on January 15, 2006 or January 26, 2007.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). The applicant is also 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). 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 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.