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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



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DATE: DEC 08 2011 Office: VERMONT SERVICE CENTER

FILE:

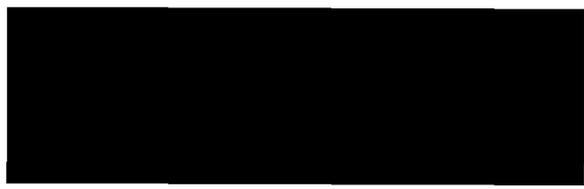


IN RE: Applicant:



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

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that the director erred in withdrawing TPS without first notifying the applicant, and without first allowing the applicant the opportunity to seek a waiver of the grounds of inadmissibility.

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).

"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 Federal Bureau of Investigation report dated October 29, 2010, reflects that the applicant was arrested by the Fairfax County Police in Fairfax, Virginia on April 19, 2002, for hit and run-causing personal injury and on March 16, 2010, for occupied building – maliciously shoot/throw.

Contrary to counsel's assertions, the applicant was advised by the director of his intent to withdraw TPS. The record reflects that on February 8, 2011, the director issued a notice which requested the applicant to submit certified judgment and conviction documents for all arrests. The applicant was advised that if he had been convicted of a felony or two or more

misdemeanors in the United States, his re-registration application for TPS would be denied and his TPS would be withdrawn. The applicant, in response, submitted:

- Court documentation in Case no. [REDACTED] from the Fairfax County General District Court, which indicates that on June 11, 2002, the applicant was convicted of fail to stop at scene of an accident, a violation of Virginia Code section 46.2-894, a Class 1 misdemeanor. The applicant was sentenced to serve 180 days in jail, all but five days were suspended and his license was suspended for 60 days.
- Court documentation in Case no. [REDACTED] from the Fairfax County Juvenile and Domestic Relations District Court, which indicates that on about March 14, 2010, the applicant was charged with violating Virginia Code section 18.2-279, discharging firearms or missiles within or at building or dwelling house. On March 15, 2010, the charge was amended to trespass after having been forbidden to do so, a violation of Virginia Code section 18.2-119. On May 5, 2010, the applicant pled *nolo contendere* to violating this Class 1 misdemeanor. The court found sufficient facts to find the applicant guilty but deferred entry of judgment until November 5, 2010. The applicant was sentenced to serve 30 days in jail, which was suspended for a period of six months conditioned upon the applicant being of good behavior, keeping the peace, obeying the court order, paying fines and costs, and no further violations of law. On December 13, 2010, the case was dismissed.

The court disposition reflects that the applicant pled guilty to the trespass offense and the judge ordered some form of punishment and a restraint on the applicant's liberty to the charge. Therefore, for immigration purposes, the applicant was convicted of the misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

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