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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

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U.S. Citizenship
and Immigration
Services

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DATE: Office: VERMONT SERVICE CENTER FILE: 
DEC 02 2011

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that there is no finding of guilty, or of sufficient facts to warrant a conviction of the applicant's second offense. Counsel asserts that this offense has not been decided, and "will not until he returns to Court."

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 March 10, 2010, reflects that the applicant was arrested by the Sheriff's Office of Leesburg, Virginia on November 11, 2007, for driving while intoxicated, blood alcohol content .08-.14 percent - first offense, and on February 3, 2010, for assault on a family member.

On May 19, 2011, a notice was issued requesting the applicant to submit the certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

1. A document dated December 17, 2010, from a representative of an Alcohol Safety Action Program, who indicated that the applicant has successfully completed the requirement of education.
2. Court documentation from the Loudoun County General District Court, indicating that on December 11, 2007, the applicant was convicted of violating Virginia Code section 46.2-852, reckless driving,¹ a Class 1 misdemeanor. The applicant was sentenced to serve 30 days in jail, which was suspended.
3. Documentation dated December 13, 2010, from the domestic violence probation officer of Loudoun County Community Corrections, who indicated that on March 8, 2010, the applicant was before the court and was granted a deferred finding for 24 months on the charge of domestic assault and battery. The applicant was placed on probation with Loudoun County Community Corrections and ordered to comply with domestic violence treatment. On July 20, 2010, the applicant successfully completed all the conditions of his supervised probationary period and his case was closed with Community Corrections. The probation officer indicated that the case will remain open in court until March 8, 2010, at which time, if no new criminal charges have been incurred, the charge will be dismissed by the court. Case no. [REDACTED]

Contrary to counsel's assertion, the director did not find the applicant to be convicted of domestic assault and battery. The director, in his decision, noted, in pertinent part:

These documents do not satisfy the requirement of submitting court documents which shows the judge's findings or recommendation for sentencing, nor do the documents contain [the applicant's] pleadings. USCIS is not convinced based on the evidence submitted that you were not "convicted" of Domestic Assault and Battery. Further, a deferred finding in the State of Virginia **may be** a conviction while a person is serving out a probationary period.

[Emphasis added].

Without the requested court documentation from the Loudoun General District Court, it cannot be determined if the offense of Virginia Code section 18.2-57.2 qualifies as a conviction under section 101(a)(48)(A) of the Act. The applicant had the opportunity on appeal to provide the requested court documentation, but failed to do so.

¹ The director, in his decision, inadvertently cited the offense to be driving while intoxicated. This was a harmless error by the director, which did not affect the outcome of the decision and has not prejudiced the applicant.

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). 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.