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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: DEC 30 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (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, counsel asserts that the charges stemming from the applicant's 1993 arrest were not felonies. Counsel asserts that the applicant's inability to produce the disposition from the court is the direct result of the court's record destruction policy. Counsel submits the court dispositions for the applicant's arrests in 1999 and 2008.

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 Federal Bureau of Investigation report dated March 10, 2010, reveals the applicant's criminal history as follows:

1. On September 4, 1993, the applicant was arrested by the Fairfax County Police (Virginia) for two counts of felony exposure.
2. On June 1, 2000, the applicant was arrested by the Millersville Police Department (Maryland) for indecent exposure.
3. On November 25, 2008, the applicant was arrested by the Annapolis Police Department (Maryland) for driving on revoked license.

On January 27, 2011, a notice was issued, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

- Court documentation in Case no. [REDACTED] from the District Court of Maryland, of Anne Arundel County, which indicates that on September 17, 2001, the applicant pled guilty to indecent exposure, a violation of section 11-107, a misdemeanor. The applicant was ordered to pay a fine and was placed on probation.
- A Local Adult Criminal Record Check notarized April 30, 2004, from the Fairfax County Police reflecting the applicant's arrest on September 4, 1993, for two counts of indecent exposure. Summons nos. [REDACTED] and [REDACTED]. The document indicated that the dispositions were not known.
- Court documentation in Case nos. [REDACTED] and [REDACTED] from the District Court of Maryland, of Anne Arundel County, which indicates that on August 25, 1999, the applicant pled guilty to catching bass between midnight and 5:00 a.m., and possession of undersize striped bass, both violations.¹ The applicant was ordered to pay a fine.
- Court documentation in Case no. [REDACTED] from the District Court of Maryland, of Anne Arundel County, which indicates that on August 25, 1999, the applicant pled guilty to a violation. The applicant was ordered to pay a fine.
- Court documentation indicating that no charges were filed for the applicant's arrest on November 25, 2008.

It is noted for the record that in earlier proceedings, notices were issued on September 16, 2005, November 25, 2005, and January 24, 2006, which requested the applicant to submit the certified judgment and conviction documentation from the court for his arrest on September 4, 1993. The requested document, however, was not submitted.

¹ Although the court documents do not list the Natural Resources Article offense codes (COMAR 08.02.15) that were violated, the maximum penalty for a first offense is a fine.

The director, in his decision, determined that the documentation from the Fairfax County Police Department was insufficient as it was not a judgment and conviction document from a court of law and it did not provide the dispositions of the related crimes. 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 April 11, 2011.

On appeal, counsel submits an additional document from the Fairfax County Police Department, which reflects the applicant's arrest on September 4, 1993; however, no disposition, was listed.

The fact that the dispositions have not been reported to the police department does not establish that the charges have been dismissed. The documentation from the Fairfax County Police Department is not sufficient evidence to establish that the applicant was not convicted of the offenses cited above.

The applicant has the burden to establish with affirmative evidence that outstanding charges were in error or dismissed. Likewise, a statement made by counsel is not affirmative evidence and fails to meet the applicant's burden. 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 from the withdrawal of the TPS application is dismissed.