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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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M,

DATE: **JUL 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 case will be remanded for further consideration and action.

The applicant is a native and 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 director withdrew TPS after determining that the applicant's conviction was an aggravated felony.

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).

"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 record reflects that on October 31, 2008, the applicant was arrested by the Washington D.C. Police Department for other sex offense (misdemeanor sex abuse).

In response to the Notice of Intent to Withdraw TPS issued on April 6, 2009, the applicant submitted court documentation in Case no. [REDACTED] from the Superior Court of The District of Columbia, which reflects that on November 1, 2008, the applicant was charged with misdemeanor sexual abuse, a violation of D.C. Code § 22-3006. On May 21, 2009, the applicant was convicted of one count of misdemeanor sexual abuse, a violation of D.C. Code § 22-3006. The applicant was sentenced to 180 days in jail which was suspended and was placed on supervised probation for one year.

In his decision to withdraw TPS, the director determined that the applicant had been convicted of an aggravated felony, and noted in pertinent part:

The record reflects that the Superior Court of The District of Columbia, convicted you on May 21, 2009, for **SEXUAL ABUSE OF A MINOR (a misdemeanor)**. However, for purposes of the Act, the conviction of Sexual ABUSE of A MINOR is classified as an **aggravated felony per 101(a)(43)(A)**.

The record, however, does not support the director's finding. There is no evidence in the record to indicate that the applicant had been convicted of violating D.C. Code § 22-3008 (child sexual abuse in the first degree), D.C. Code § 22-3009 (child sexual abuse in the second degree), D.C. Code §§ 22-3009.01 (sexual abuse of a minor in the first degree), D.C. Code § 22-3009.02 (sexual abuse of a minor in the second degree) or D.C. Code § 22-3010.01 (misdemeanor sexual abuse of a child or minor). While the AAO does not condone the applicant's actions, the Affidavit in Support of an Arrest Warrant dated October 20, 2008, is silent to the age of the defendant and clearly indicates that the applicant was charged with misdemeanor sexual abuse. As noted above, the court documentation indicates that the applicant was charged with and convicted of violating D.C. Code § 22-3006, misdemeanor sexual abuse.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.