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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



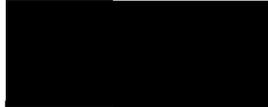
U.S. Citizenship
and Immigration
Services



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DATE: JUN 02 2011

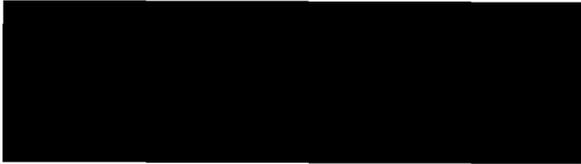
Office: VERMONT SERVICE CENTER

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that 2009 driving while intoxicated charge was amended to a traffic conviction of reckless driving. Counsel asserts, "[t]his cannot be a basis for denial as it does not trigger ineligibility grounds."

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 record contains court documents from the General District Court of Fairfax County, Virginia, which reveals the following:

1. On July 14, 2001, the applicant was arrested and charged with violating Virginia Code section 18.2-347, keep/frequent a bawdy house, a misdemeanor. On December 6, 2001, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 30 days in jail and ordered to pay a fine. Imposition of sentence was suspended. [REDACTED]
2. On July 7, 2009, the applicant was arrested and charged with violating Virginia Code section 18.2-266, driving while intoxicated. The charge was amended to reckless driving, a violation of Virginia Code section 46.2-852, a Class 1 misdemeanor. On August 24, 2009, the applicant was convicted of this misdemeanor offense. The applicant was sentenced to serve 30 days in jail and

ordered to pay a fine. Imposition of sentence was suspended and the applicant was placed on probation for one year.

In the instant case, a crime of reckless driving is classified as a Class 1 misdemeanor. *See* Virginia Code section 46.2-868. The punishment for a conviction of a Class 1 misdemeanor is by imprisonment for a period of not more than a year and a fine or not more than \$1000, either or both. *See* Virginia Code section 18.2-11(a). As noted above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any*. Consequently, the conviction in number two is considered a misdemeanor for immigration purposes.

It is noted that the director stated in his decision that the applicant had been convicted on August 24, 2009, of driving while intoxicated instead of reckless driving. This was a harmless error on behalf of the director, which did not affect the outcome of the decision and has not prejudiced the applicant.

The applicant is 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). 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.