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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

M₁

DATE: **JUN 09 2011**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

IN BEHALF OF APPLICANT:
[REDACTED]

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 sustained.

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 he found the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits all of the requested court documents.

An alien shall not be eligible for temporary protected status 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 Federal Bureau of Investigation report dated January 27, 2010, reflects the applicant's criminal history in the state of New York as follows:

1. On November 6, 2004, the applicant was arrested for operate a motor vehicle with .08 percent or more alcohol in the blood - 1st offense, and operate a motor vehicle while intoxicated.
2. On September 14, 2005, the applicant was arrested for criminal possession of a weapon in the 3rd degree and menacing in the 2nd degree.
3. On June 28, 2007, the applicant was arrested for public lewdness, operate a motor vehicle with .08 percent or more alcohol in the blood, operate a motor vehicle while intoxicated and drinking alcohol in motor vehicle.
4. On November 1, 2007, the applicant was arrested for operate a motor vehicle while intoxicated and operate motor vehicle with .08 percent or more alcohol in the blood - 1st offense.
5. On July 17, 2008, the applicant was arrested for assault in the 3rd degree, unlawful imprisonment and menacing in the 3rd degree.

In response to a Notice of Intent to Withdraw TPS issued on June 15, 2009, which requested the applicant to submit the final court dispositions for all arrests, the applicant only submitted court documentation for number three.

On appeal, counsel provides:

- Court documentation for number one, which reflects that on February 1, 2005, the applicant was convicted of violating [REDACTED] reckless driving, a misdemeanor, and [REDACTED] required obedience to traffic laws, an infraction. Case no. [REDACTED]
- Court documentation for number two, which reflects that on December 30, 2005, the applicant was convicted of violating [REDACTED] disorderly conduct, a violation. Case no. [REDACTED]
- Additional court documentation for number three, which reflects that on June 25, 2008, the applicant was convicted of violating [REDACTED], driving while ability impaired, a violation.
- Court documentation for number four, which reflects that on January 12, 2009, the applicant was convicted of violating [REDACTED] driving while ability impaired, a violation. Case no. [REDACTED]
- Court documentation for number five, which reflects that on May 6, 2009, all charges were dismissed pursuant to [REDACTED] (adjournment in contemplation of dismissal).

Violations committed in the State of New York are not considered “crimes” under state law, do not constitute misdemeanors or felonies, and may not be punished by more than 15 days of imprisonment. *See* New York Penal Law § 10.00(3), (4) and (6).

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services (USCIS) has determined that New York violations should not be considered disqualifying misdemeanors.

The applicant has one misdemeanor conviction for reckless driving and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation 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 and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.