

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: NOV 01 2011 Office: VERMONT SERVICE CENTER

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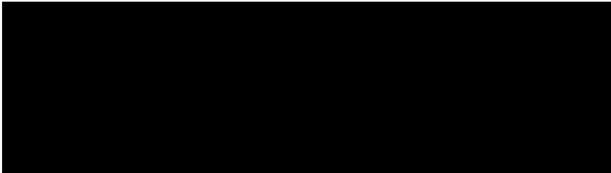


IN RE: Applicant:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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, which was received on July 1, 2011, counsel argues that the misdemeanor convictions are invalid because "they did not fulfill the constitutional rights of applicant to have effective assistance of counsel."

Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> On July 26, 2011, the AAO received correspondence dated July 20, 2011, from counsel requesting an extension of 60 days in which to supplement the appeal.<sup>2</sup> Said request was granted on July 28, 2011.<sup>3</sup> On September 30, 2011, the AAO received a facsimile from counsel requesting an additional thirty days in which to supplement the appeal. Said request was granted on the same date. On October 26, 2011, the AAO received a facsimile from counsel requesting an additional thirty days in which to supplement the appeal. Counsel's request, however was denied. No supporting brief has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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,

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<sup>1</sup> Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

<sup>2</sup> Counsel was on medical leave.

<sup>3</sup> The affected party may make a written request to the AAO for additional time to submit a brief. The AAO may, for good cause shown, allow the affected party additional time to submit a brief. 8 C.F.R. § 103.3(2)(vii).

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.

In response to the notice dated February 16, 2011, which requested the applicant to submit the certified judgment and conviction documents from the courts for all arrests, the applicant provided:

1. Court documentation in Case no. [REDACTED] from the San Joaquin County, Superior Court of California, which indicates that on November 17, 2010, the applicant pled *nolo contendere* to violating section 23152(a) VC, driving under the influence of alcohol, a misdemeanor.
2. Court documentation in Case no. [REDACTED] from the Alameda County Superior Court of California, which indicates that on July 27, 2007, the applicant pled no contest to violating section 14601.5(a) VC, driving while privilege is suspended or revoked for refusal of chemical test or driving with excessive blood alcohol, a misdemeanor.

Counsel has not provided any credible evidence to support his assertion that the applicant had ineffective assistance of counsel. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). U.S. Citizenship and Immigration Services may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991). The AAO concludes that the misdemeanor convictions continue to effect immigration consequences.

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). 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.