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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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[REDACTED]

M,

DATE: **NOV 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

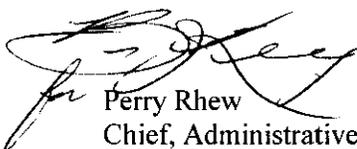
ON BEHALF OF APPLICANT:
[REDACTED]

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel puts forth a brief disputing the director's findings.

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 documentation in Case no. [REDACTED], from the Juvenile and Domestic Relations District Court of Arlington County, Virginia, which reflects that on May 16, 2011, the applicant pled guilty to damage telephone line, a violation of Virginia Code section 18.2-164, and assault and battery, a violation of Virginia Code section 18.2-57.2, both Class 1 misdemeanors. For each conviction, the applicant was sentenced to serve 180 days (to run consecutively) of which 135 days were suspended for one year conditioned upon compliance of the court's order.

On appeal, counsel, citing Virginia Code section 8.01-654, asserts that the applicant's convictions should not be considered final for the purpose of TPS eligibility until the statutory period for post-conviction relief has expired. However, this does not support counsel's claim that the offenses should not be considered convictions. 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 record, in this case, reflects that the applicant entered a plea of guilty to each offense, and the judge accepted the plea and ordered some form of punishment and restraint on the applicant's liberty. Therefore, for immigration purposes, the applicant was convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

Counsel asserts that the sentence handed down for damage to a telephone line is within the range for a Class 2 misdemeanor. Counsel argues that, "[t]here is no indication [the applicant] was convicted of the Class 1 misdemeanor" and, therefore, the director implicitly and erroneously assumed that a conviction of damage to a telephone line is a Class 1 misdemeanor.

Anyone who maliciously prevents or interferes with telephone or telegraph communication by disabling or destroying any device that enables such communication, whether wired or wireless, with the intent to prevent another person from summoning law-enforcement, fire, or rescue services is guilty of a Class 1 misdemeanor. *See* Virginia Code section 18.2.164(B).

Contrary to counsel's assertion, the court documentation clearly identified the charge of damage to a telephone line to be a Class 1 misdemeanor. Counsel has not provided any credible evidence from the court to indicate the applicant was convicted of a Class 2 misdemeanor. 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). Regardless of the Class in which the applicant was subsequently found guilty, the fact remains that the applicant was convicted of a misdemeanor for immigration purposes.¹

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.

¹ Class 1 and Class 2 misdemeanors are punishable by twelve-month and six-month jail sentences, respectively.