

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: NOV 22 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted 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 failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant was not able to procure evidence of an arrest for possession of a narcotic controlled substance "because no such arrest exists." Counsel submits an additional copy of the court documentation in Case no. [REDACTED] along with an infraction complaint filed from the Los Angeles County Superior Court, which relates to an offense of possession of open container in public place.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. 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.

The Federal Bureau of Investigation (FBI) report dated March 16, 2010, reflects that on July 5, 2009, the applicant was arrested by the Los Angeles Police Department for one count of possession of narcotic controlled substance.

On January 24, 2011, a notice was issued requesting the applicant to submit certified judgment and conviction documents from the courts for all arrests, including the arrest on July 5, 2009, for possession of narcotics controlled substance. The applicant, in response, submitted court documentation in Case no. [REDACTED] which indicated that the applicant was charged on July 23, 2009 and subsequently convicted of violating 25620 B&P, possession of open container in public place, an infraction.

The director determined that the court documentation submitted did not indicate that the charge of possession of open container in public place related to or was pled down from the original

charge of possession of narcotic controlled substance. The director concluded that the applicant had failed to submit the requested court documentation relating to the drug arrest on July 5, 2009. On March 8, 2011, the director withdrew the applicant's TPS.

On September 29, 2011, the AAO issued a notice to the applicant advising him that the drug arrest of July 5, 2009, was obtained via a fingerprint comparison from the FBI, and that the FBI 'rap sheet' lists only information reported to it by local and state law enforcement agencies. The applicant was also advised that a single criminal transaction can result in violations of separate code sections. Therefore, without certified documentation from the arresting agency and from the court indicating that no charge was filed for the arrest on July 5, 2009, for possession of narcotic controlled substance or that this drug offense was amended/reduced to a lesser offense, the AAO would affirm the director's finding. The applicant was granted 30 days to submit a response.

The applicant, in response, provided an affidavit indicating, in pertinent part:

I went to the police station to try to get the record of my conviction and a policeman gave me a number [REDACTED] to obtain my record and I called it the following day and they could not give me my record unless immigration asked for it by sending a letter. I also tried to get my record from the city Attorney office in [REDACTED] and they also could not give me any records they told me I was not in there system at all.

Without certified documentation from the arresting agency and/or the court indicating that no charge was filed for the drug arrest, the applicant has not overcome fully and persuasively, the director's finding. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has the burden to establish, with affirmative evidence, that an outstanding charge was dismissed or was in error.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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.