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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
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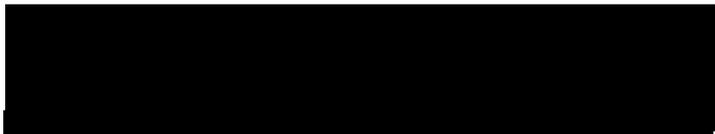
DATE: Office: VERMONT SERVICE CENTER FILE: 

NOV 22 2011

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 all the requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court disposition. Counsel requests that TPS be reinstated as the applicant's arrests in 2004 and 2010 did not involve any violence.

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).

"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.

"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 November 12, 2010, reflects the applicant's criminal history as follows:

1. On April 14, 1996, the applicant was arrested by the Irving Police Department in Texas for possession of counterfeit instrument.
2. On July 5, 2004, the applicant was arrested by the Westhampton Beach Police Department in New York for driving while intoxicated.

3. On February 4, 2010, the applicant was arrested by the Riverside Police Department in New York for aggravated driving while intoxicated and driving while intoxicated – previous conviction within ten years.

On February 4, 2011, a notice was issued, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

- For number one, court documentation in Case no. [REDACTED], from the Dallas County District Court, indicating that on May 4, 2000, the case was dismissed on motion by the district attorney.
- For number two, court documentation in Case no. [REDACTED] from the Westhampton Beach Justice Court, indicating that on November 24, 2004, the applicant pled guilty to violating VTL [REDACTED] operate a motor vehicle while intoxicated with .08 or more blood alcohol content, a misdemeanor. The remaining misdemeanor charge of VTL [REDACTED] was dismissed.

On appeal, counsel submits court documentation in Case no. [REDACTED] from the Suffolk County Court indicating that on January 13, 2011, the applicant was convicted of violating [REDACTED], aggravated driving while intoxicated with .18 or more blood alcohol content – one prior, a Class E felony.

The applicant is ineligible for TPS due to his felony conviction. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel's statements made on appeal have been considered. Nevertheless, 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.