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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:

Office: VERMONT SERVICE CENTER

FILE:



OCT 17 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: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, the applicant asserts that vehicle code infractions "classified as misdemeanors [sic] is beyond the scope of what the intent of TPS regulation for eligibility entitles. Such offenses are not Crimes in the classic sence [sic] of the word."

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 Federal Bureau of Investigation report dated December 22, 2010, reflects the following offenses in the state of California:

1. On October 4, 2004, the applicant was received by the Department of Corrections in San Jose for the charge of driving under influence.
2. On April 15, 2005, the applicant was received by the Department of Corrections in San Jose for the charges of driving under influence with .08 percent or more alcohol in the blood and unlawful to drive unless.
3. On June 23, 2005, the applicant was received by the Department of Corrections in San Jose for the charges of driving while license is suspended, driving while privilege is suspended/revoked and accident only resulting.
4. On September 19, 2005, the applicant was received by the Department of Corrections in San Jose for the charge of driving while privilege is suspended or revoked.

5. On October 10, 2007, the applicant was received by the Department of Corrections in San Jose for the charges of driving without due caution and driving while privilege is suspended or revoked.

On January 28, 2011, a notice was issued which requested the applicant to submit certified judgment and conviction documents for all arrests. The applicant, in response, submitted:

- Court documentation from the Santa Clara County Superior Court, which indicates that on October 3, 2003, the applicant was arrested for and subsequently charged with violating section 23152(a) California Vehicle Code (CVC), driving under the influence of alcohol, and section 23152(b) CVC, driving with .08 percent or more alcohol in the blood, both misdemeanors. The applicant pled guilty to violating section 23152(b) CVC. The remaining charge was dismissed. Case no. [REDACTED]
- Court documentation from the Santa Clara County Superior Court, which indicates that on May 4, 2004, the applicant was arrested for and subsequently charged with violating section 14601.5(a) CVC, driving while privilege is suspended or revoked for refusal of chemical test, PAS test or driving with BAC level is .08 percent or more, a misdemeanor. The applicant pled guilty to violating section 14601.5(a) CVC. Case no. [REDACTED]
- Court documentation from the Santa Clara County Superior Court, which indicates that on December 18, 2004, the applicant was arrested for and subsequently charged with violating section 14601.1(a) CVC, driving when privilege is suspended or revoked for any reason, and section 14601.5(a) CVC driving while privilege is suspended or revoked for refusal of chemical test, PAS test or driving with BAC level .08 percent or more, both misdemeanors. The applicant pled guilty to violating section 14601.5(a) CVC. The remaining charge was dismissed. Case no. [REDACTED]
- Court documentation from the Santa Clara County Superior Court, which indicates that on January 27, 2005, the applicant was arrested for and subsequently charged with violating section 14601.5(a) CVC, driving while privilege is suspended or revoked for refusal of chemical test, PAS test or driving with BAC level .08 percent or more, and section 20002(a) CVC, hit and run causing property damage, both misdemeanors. The applicant pled guilty to violating sections 14601.5(a) CVC and 20002(a) CVC. Case no. [REDACTED]
- Court documentation from the Santa Clara County Superior Court, which indicates that on February 22, 2005, the applicant was arrested for and subsequently charged with violating section 14601.5(a) CVC, driving while privilege is suspended or revoked for refusal of chemical test, PAS test or driving

with BAC level is .08 percent or more, a misdemeanor. The applicant pled guilty to violating section 14601.5(a) CVC. Case no. [REDACTED]

The applicant, on appeal, asserts, in pertinent part:

Record clearances granted by are effective in removing ineligibility in that they are like the conviction is dismissed pursuant to CPC 1210.1, see Lujan-Armendariz v. INS 22 F3d 728 (2001). Also they are as effective as Federal first Offender remedy.

The applicant's assertion is without merit. [REDACTED] refers to first-time offenders of simple possession of a controlled substance who were subject to or convicted under the Federal First Offender Act. None of the arrests noted above relate to a controlled substance violation and the applicant has not shown that he was convicted under the Federal First Offender Act .

Section 40000.15 CVC specifically states that a violation of section 23152 CVC, relating to driving under the influence, shall constitute a misdemeanor and not an infraction. The penalty for a first conviction of violating section 23152(b) CVC is punishable by a jail term of 96 hours to 180 days. See Section 23536(a) CVC. The court documentation in Case no. [REDACTED] indicates that the applicant was sentenced to serve five days in jail.

Pursuant to section 14601.5(d) CVC, any person convicted under section 14601.5(a) shall be punished as follows:

- Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment.
- If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

Section 20002(c) CVC provides that any person failing to comply with all the requirements of section 20002 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

As cited above, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. Therefore, the above offenses constitute misdemeanors for immigration purposes.

The applicant is ineligible for TPS due to his 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.