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

[redacted]

M1

DATE: APR 1 2 2012 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: 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,

for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 arrest on July 31, 2009.

At Part 2 of the Form I-290B, Notice of Appeal or Motion, the applicant checked the box indicating that he was filing an appeal. The applicant, however, submits a brief requesting that his case be considered as a motion to reconsider. As the Form I-290B has precedent over the brief, the brief will be treated as an appeal.

On appeal, the applicant asserts that he had previously submitted the court dispositions. The applicant submits court documentation from the Chelsea District Court of Massachusetts.

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).

"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 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 reveals the following offenses in the state of Massachusetts:

1. On January 28, 2002, the applicant was arrested by the Boston Police Department for operating under the influence of alcohol.

2. On July 31, 2009, the applicant was arrested for battery on police officer, resisting arrest, failure to stop for police motor vehicle, operating a motor vehicle under the influence of liquor – 2nd offense, and operating a motor vehicle negligent to endanger.

The record contains court documentation in Case no. [redacted] from the Trial Court of Massachusetts for the East Boston District Court, which indicates that on April 2, 2002, the applicant pled guilty or admitted to sufficient fact of violating M.G.L. Chapter 90, section 24(1)(a)(1), operating under the influence of alcohol, a misdemeanor. Sufficient facts were found and continued without finding until March 31, 2003. The applicant was ordered to complete an alcohol program, pay all fees and court costs and his license was revoked/suspended for 45 days. On March 5, 2003, the case was dismissed at the request of the probation department.

On October 8, 2009, the applicant was requested to submit certified judgment and conviction documents from the court for his arrest on July 31, 2009. The director, in his decision to withdraw the applicant's TPS, noted that no response to the notice of October 8, 2009, had been received. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on March 4, 2010.

On appeal, the applicant asserts that he had previously submitted the requested court disposition relating to his arrest on July 31, 2009. As evidence, the applicant submits a copy of a PS Form 3811V, Domestic Return Receipt, from the U.S. Postal Service, which reflects a received stamp of "September 11, 2009," from the Vermont Service Center.

The Form 3811V, however, does not support the applicant's assertion as the notice requesting the court dispositions was not issued until 27 days later on October 8, 2009.

On appeal, the applicant submits court documentation in Case no. [redacted] from the Chelsea District Court and documentation from the Middlesex D.U.I.L. Program, which indicate that he had successfully completed a court mandated 2nd offender DUIL program.

The court documentation from the Chelsea District Court, however, is incomplete as it only provides the dispositions for three of the five offenses. Specifically, on October 6, 2009, the applicant admitted to sufficient facts to violating M.G.L. Chapter 265, section 13(d), assault and battery on a police officer, and M.G.L. Chapter 265, section 32(b), resisting arrest. Sufficient facts were found and continued without finding until October 6, 2010. On October 6, 2009, the applicant pled guilty to violating M.G.L. Chapter 90 section 25, fail to stop for police. The court dispositions for negligent operation of motor vehicle and operating under the influence of alcohol - 2nd offense were not provided.

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). The applicant is also ineligible for TPS as

he has been convicted of at least two misdemeanors. 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 from the withdrawal of the TPS application is dismissed.