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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: **FEB 06 2012** Office: VERMONT SERVICE CENTER

FILE:

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 application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that he has only been "charged with misdemeanors but never convicted." The applicant submits court documentation from the North Las Vegas Municipal Court and an arrest report from the Las Vegas Police Department.

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 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 contains court documentation in Case no. [REDACTED] from the Las Vegas Municipal Court of Nevada, which indicates that on June 4, 2001, the applicant pled guilty to violating N.R.S. 200.481, battery/domestic violence. The applicant was ordered to pay a fine.

The record reflects that on March 23, 1997, the applicant was arrested by the North Las Vegas Police Department for obstructing police officer and leaving the scene of an accident.

On June 11, 2009, the director issued a notice which requested the applicant to submit certified judgment and conviction documents for his arrest on March 23, 1997. In response, U.S. Citizenship and Immigration Services received a letter dated July 1, 2009, from a representative of the City of North Las Vegas Municipal Court, who indicated that the court case in [REDACTED] for leaving scene of accident and obstructing police officer had been purged from its system in

accordance with N.R.S. 239.110(4)¹ for its record retention. The applicant, in response submitted:

- A letter dated July 7, 2009, from a court clerk of the City of North Las Vegas Municipal Court, who indicated that court case [REDACTED] had been purged from its system in accordance with N.R.S. 239.110(4) for its record retention.
- The police report for the March 23, 1997, arrest from the North Las Vegas Police Department.

The director determined that the documents submitted were insufficient as they did not indicate a final disposition for the arrest on March 23, 1997. The director concluded that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 7, 2011.

On appeal, the applicant submits:

- A letter dated July 14, 2011, from a court clerk of the City of North Las Vegas Municipal Court, who indicated that the court files for the misdemeanor offenses of leaving scene of accident and obstructing police officer had been purged from its system in accordance with N.R.S. 239.110(4) for its record retention.
- A letter dated July 14, 2011, from a court clerk of the City of North Las Vegas Municipal Court, who indicated that the court had no records in the applicant's name for the following charges: 1) taking vehicle without owner's consent; 2) false IDs; 3) reckless; 4) no driver's license; and 5) hit and run.
- The police report regarding his arrest on March 23, 1997, from the North Las Vegas Police Department for leaving the scene of an accident and obstructing a police officer.

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charges or convictions. As noted above, the police report indicates that the applicant was arrested for the two misdemeanor offenses. None of the court documents submitted provides sufficient explanatory information to enable the AAO to determine whether the offenses were dismissed. The applicant has the burden to establish with *affirmative evidence* that the offenses were either dismissed or were in error.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. Consequently, the director's decision to deny the application for this reason will be affirmed.

¹ A reproduction of an image of a court record that has been placed on microfilm or saved pursuant to this section shall be deemed to be the original court record, regardless of whether the original exists.

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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on December 13, 2009, a master hearing was held before an immigration judge and the applicant's deportation proceedings was administratively closed.²

ORDER: The appeal is dismissed.

² Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).