U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: JAN 05 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:

[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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that the applicant's offenses were not aggravated felonies or offenses of moral turpitude. Counsel contends that the applicant's criminal record does not constitute two misdemeanors. Counsel provides an additional copy of a profile of cases relating to the applicant's criminal record in the years 2000 and 2001.

It is noted that on appeal, counsel indicated that neither he nor the applicant had received the director's Notice of Decision dated July 21, 2009. On October 12, 2011, copies of said decision were sent to the applicant and counsel at their addresses of record. Counsel, in response, asserts that the applicant's conviction for driving while license is suspended is a traffic citation and therefore should not be considered a second misdemeanor. Counsel asserts that the applicant did not receive a jail sentence for this conviction; only a fine and court costs.

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 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.

In response to a notice issued on April 2, 2009, which requested the applicant to submit certified judgment and conviction documents for all arrests, the applicant submitted:

- Certified court documentation in from the Tuscaloosa Municipal Court of Alabama, which indicates that on June 17, 2000, the applicant was charged with driving under the influence - first offense, a violation of Alabama Code section 32-5A-191, a misdemeanor. On September 21, 2000, the applicant pled guilty to the offense and was ordered to pay a fine and court costs and complete an alcohol program.

- Certified court documentation from the Tuscaloosa Municipal Court Records, which indicates that on or about November 2, 2000, the applicant was arrested and subsequently charged with driving while license suspended, a violation of Alabama Code section 32-6-19(a)(1), a misdemeanor. On February 19, 2001, the applicant pled guilty to the offense.

- Certified court documentation from the Tuscaloosa Municipal Court Records, which indicates that on or about May 12, 2001, the applicant was arrested for driving while license suspended. The final disposition was not listed on the court document.

- Certified court documentation from the Tuscaloosa Municipal Court Records, which indicates that on June 16, 2001 and August 12, 2001, the applicant was arrested for public intoxication. The cases were dismissed on June 25, 2001 and September 26, 2001, respectively.

Upon a first conviction of driving under the influence, an individual shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine up to $2,100, or by both such fine and imprisonment. *See* Alabama Code section 32-5A-191(e).

Any person whose driver's license or privilege has been cancelled, denied, suspended, or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by a fine up to $500 and in addition thereto may be imprisoned for not more than 180 days. *See* Alabama Code section 32-6-10(a)(1).

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.*"

The record, in this case, reflects that the applicant entered a plea of guilty to each offense, and the judge accepted the plea and ordered some form of punishment to each charge. Therefore, for immigration purposes, the applicant was convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his two 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.