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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

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DATE: **JAN 13 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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 criminal record.

On appeal, the applicant asserts that he has never visited nor been arrested in Illinois. The applicant provides documentation from the Illinois State Police indicating that there was no record of criminal conviction in his name.

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.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Federal Bureau of Investigation (FBI) report dated March 12, 2010, reveals the applicant's criminal history as follows:

1. On March 31, 2007, the applicant was arrested by the Storm Lake Police Department of Iowa for consumption/intoxication in a public place.

2. On May 30, 2008, the applicant was arrested by the Hawthorne Police Department of California for two counts of driving without a license.
3. On September 21, 2008, the applicant was detained by the Sheriff's Office of Norwalk, California for one count of possession of a controlled substance.

On January 28, 2011, the director issued a notice, which advised the applicant to submit certified judgment and conviction documents from the courts for all arrests. On April 27, 2011, the director withdrew the applicant's TPS because the applicant failed to submit a timely response to the above notice.

On appeal, the applicant submitted the court disposition for number one, which reflects that on April 3, 2007, the Iowa District Court in and for Buena Vista County, the applicant pled guilty of violating Iowa Code section 123.46(2), consumption/intoxication in public place, and Iowa Code section 718.6(3), provide false information, both misdemeanors. The applicant was ordered to pay a fine for each offense. [REDACTED]

It is noted that the director indicated in his notice of January 28, 2011 that the applicant had been arrested on May 30, 2008, by the Police Department of Chicago, Illinois for two counts of driving without a license.

On November 22, 2011, the AAO issued a notice to the applicant advising him that the director had inadvertently indicated he had been arrested on May 30, 2008, in Illinois instead of California. The applicant was informed that the FBI report indicated that he had been arrested on May 30, 2008, by the Hawthorne Police Department for two counts of driving without a license. The applicant was granted 30 days to submit certified judgment and conviction documentation from the court for the May 30, 2008, arrest. The record shows that as of the date of this decision, the applicant has failed to respond to the AAO's notice. Therefore, the record must be considered complete.

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). The applicant is also ineligible for TPS because he has failed to provide any evidence revealing the final court disposition of his arrest of May 30, 2008, necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.