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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant claims to be 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 denied the application because the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, counsel asserts that the court dispositions indicate that the applicant was charged with traffic violations and that the applicant pled guilty to two traffic infractions.

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 the following:

1. Court documentation in Case no. [redacted] from the General District Court (Traffic) for the City of Alexandria, Virginia, which indicates that on October 27, 1996, the applicant was arrested and subsequently charged with violating Virginia Code section 18.2-266, driving while intoxicated. On December 11, 1996, the applicant pled guilty to the offense and was ordered to pay a fine and his driver's license was suspended for a year.

2. Court documentation from the Fairfax County General District Court (Traffic), which indicated that on November 22, 1999, the applicant was arrested and subsequently charged with violating Virginia Code section 82-1-6/18.2-66, driving while intoxicated, second offense within five years. On March 1, 2000,

the applicant pled guilty to the offense and was ordered to pay a fine, sentenced to serve 180 days in jail (174 days were suspended) and his driver's license was suspended for three years.

3. Court documentation in Case no. from the Fairfax County General District Court (Traffic), which indicated that on April 23, 2007, the applicant was arrested and subsequently charged with violating Virginia Code 42.2-300, driving without a license. On August 8, 2007, the applicant pled guilty to the offense and was ordered to pay a fine.

The fact that counsel considers the applicant's traffic convictions to be "violations" rather than "crimes," is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes. As cited above, for immigration purposes, 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. Contrary to counsel's assertion, Virginia law specifically states that a violation of section 18.2-266 is a Class 1 misdemeanor punishable by up to one year in jail and that a violation of section 42.2-300 is a Class 2 misdemeanor punishable by up to six months in jail. *See* Virginia Code sections 18.2-270 and 18.2-11. The court documents for each driving while intoxicated offense clearly indicate that the offense is a Class 1 misdemeanor.

The applicant is ineligible for TPS due to his three misdemeanors convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.