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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: Office: VERMONT SERVICE CENTER

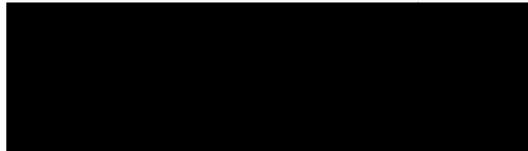
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**MAR 06 2012**

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:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 two misdemeanors in the United States.

On appeal, counsel asserts that the applicant's shoplifting conviction in Colorado was a "fine-only" conviction and should not count as a misdemeanor for TPS purposes.

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 Federal Bureau of Investigation report dated September 10, 2010, reflects that the applicant was arrested on: 1) June 16, 2002, by the Arvada Police Department of Colorado for first degree shoplifting; and 2) February 8, 2009, by the Sheriff's Office in Houston, Texas for aggravated assault with deadly weapon.

In response to the notice dated December 10, 2010, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, counsel submitted:

1. Court documentation in Case no. [REDACTED] from the city of Arvada Municipal Court of Colorado, which indicated that on April 7, 2009, the applicant pled guilty to first degree shoplifting, a violation of C.R.S.18-4-401. The applicant was ordered to pay a fine of \$305.
2. Court documentation in Case no. [REDACTED] from the 176<sup>th</sup> District Court of Harris County, Texas, which indicated that the charge of aggravated assault was reduced to a Class A misdemeanor of deadly conduct, a violation of Texas Penal Code section 22.05. On March 13, 2009, the applicant pled guilty to the offense. Adjudication of guilt was deferred and the applicant was ordered to pay court costs and was placed on community supervision for one year.

Counsel, on appeal, asserts that the shoplifting conviction does not constitute a misdemeanor for immigration purposes because the conviction resulted in a "fine-only."

Theft in Colorado is classified as a Class 2 misdemeanor if the value of the item involved is less than \$500 or as a Class 1 misdemeanor if the item involved is \$500 to \$999. *See* C.R.S.18-4-401(2)(b) and (b.5).

Although the court documentation provided does not indicate the value of the item involved, the penalty upon a conviction of a Class 2 misdemeanor ranges from three to twelve months of imprisonment or a fine of \$250 or both, and from six to eighteen months of imprisonment or a fine of \$500 or both upon a conviction of a Class 1 misdemeanor. *See* C.R.S. C.R.S. 18-1.3-501. 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.*

In the instant case, the court document submitted reflects that the applicant was found guilty of the shoplifting charge, and the judge ordered some form of penalty to the charge above. Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to her 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.