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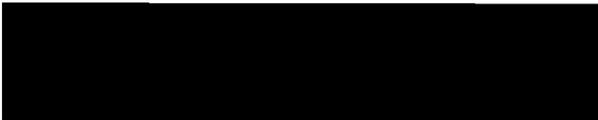
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: Office: VERMONT SERVICE CENTER

FILE:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 regulations do not specify that two counts arising out of a single scheme are to be considered two separate misdemeanors. Counsel states the only issue in question is the applicant's inadmissibility pursuant to 8 C.F.R. § 244.2. Counsel asserts that the applicant's TPS should not be revoked retroactive to his initial period of TPS eligibility.

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 April 20, 2010, reflects the applicant's criminal history as follows:

1. On or about December 30, 2001, the applicant was arrested by the Landover Police Department of Maryland for attempted robbery and concealed deadly weapon.
2. On February 11, 2007, the applicant was arrested by the Kenner Police Department of Louisiana for no driver's license and careless operation of motor vehicle.

3. On May 4, 2009, the applicant was arrested by the Sheriff's Office of Harvey, Louisiana for driving while intoxicated, hit and run while driving and reckless operation of vehicle.

The record contains the following documents from the courts:

- Court documentation in Case no. [REDACTED] from the Prince George's County District Court of Maryland, which indicates that on May 31, 2002, the State Attorney's Office entered *nolle prosequi* for the offenses in number one above.
- Court documentation in Case no. [REDACTED] from City of Kenner Clerk of Court, which reflects that on May 30, 2007, the applicant pled no contest to no driver's license and reasonable and proper control of vehicle. The applicant was ordered to pay a fine.
- Court documentation in Case no. [REDACTED] from the First Parish Court, Jefferson Parish, Louisiana, which indicates that on December 8, 2009, the applicant pled guilty to violating section 14:98, driving while intoxicated/BAC .199%, and section 14:100, hit and run. For violating LRS 14.98, the applicant was ordered to pay a fine, perform community service, sentenced to 60 days jail, which was suspended, and was placed on probation for 18 months. For violating LRS 14.100, the applicant was ordered to pay a fine. The remaining offense was dismissed.

The director withdrew the applicant's TPS because of his two misdemeanor convictions in Case no. [REDACTED]

Counsel's statements on appeal are noted. The director, however, 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).

While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Act, this determination has no bearing on the applicant's eligibility for TPS. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court disposition, the applicant was charged with two separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses.

Counsel cites memoranda issued by U.S. Citizenship and Immigration Services on January 17, 2010, and January 21, 2011, to support her argument that the applicant's convictions in Louisiana should not disqualify him from maintaining TPS. The memorandum dated January

17, 2010, specifically pertains to traffic infractions and violations committed in the state of New York. The state of Louisiana has not classified any of the above violations to be infractions. The memorandum dated January 21, 2011, specifically pertains to certain offenses where the court has issued a “no jail” or “no incarceration” certification. The court documents submitted do not indicate that a “no jail” or “no incarceration certification” was issued, and the applicant has not provided any evidence to dispute the court’s documents.

The penalty upon a first conviction of violating LRS 14.98 is by imprisonment for a period of not less than 10 days and not more than 6 months or by a fine of not less than \$300 and not more than \$1000. LRS 14.98(B)(1).

The penalty for violating LRS 14.100 is by imprisonment for a period of not less than 10 days and not more than 6 months or by a fine of not more than \$300, or by both such fine and imprisonment. LRS 14.100(b)

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 documents submitted reflect that the applicant was found guilty of each offense, and the judge ordered some form of punishment to the charges above. Therefore, for immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant has been convicted of at least two misdemeanors in the United States and is, therefore, ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on August 9, 1999, a removal hearing was held and the applicant was ordered removed from the United States. On August 10, 1999, a Form I-205, Warrant of Removal/Deportation, was issued.

ORDER: The appeal is dismissed.