

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: **MAR 23 2012** Office: VERMONT SERVICE CENTER FILE:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 is eligible for the benefit sought as she served no jail time for any of the offenses. Counsel also asserts that there is no conviction for immigration purposes for the offense of obstruction or hindering law enforcement as no judgment of guilt was entered by the court

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 March 10, 2010, reflects that the applicant was arrested by the Douglas County Sheriff's Office of Georgia for theft by taking on February 26, 2009.

On January 25, 2011, the director requested the applicant to submit certified judgment and conviction documents from the court for all arrests. The applicant, in response, submitted court

documentation in Case no. [REDACTED] from the Superior Court of Douglas County, which indicates that the applicant was charged with obstruction or hindering law enforcement and theft by taking. On June 30, 2009, the applicant pled guilty to obstruction or hindering law enforcement, a violation of O.C.G.A. § 16-10-24, a misdemeanor. Adjudication of guilt was deferred and the applicant was sentenced to confinement for a period of one year. The court further ordered that the sentence be served on probation and the applicant was also ordered to pay a \$500 fine and court costs. On June 30, 2010, the applicant's probation was terminated.

The record also contains court documentation in Case no. [REDACTED] from the Superior Court of Cobb County, Georgia, which indicates that on July 30, 2010, the applicant was charged with theft by receiving, a violation of O.C.G.A. § 16-8-7, and theft by deception, a violation of O.C.G.A. § 16-8-3. On October 24, 2010, the applicant pled guilty to both misdemeanor offenses and was placed on probation for one year and was ordered to pay restitution.

The penalty for a misdemeanor is by imprisonment for a period of not more than one year or by a fine of not more than \$500, or both. O.C.G.A. § 17-10-3. 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.*

On appeal, counsel provides a memorandum issued by U.S. Citizenship and Immigration Services on January 21, 2011, to support the argument that the applicant's conviction of obstruction or hindering law enforcement should not disqualify her from maintaining TPS. 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.

In the instant case, the court documents reflect that the applicant pled guilty to each charge above, and the judge ordered some form of punishment/penalty to each charge and/or a restraint on her liberty. Therefore, for immigration purposes, the applicant has been 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 her three 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.