

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

[REDACTED]

M1

DATE: **OCT 01 2012**

Office: VERMONT SERVICE CENTER

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserted that the applicant had filed an appeal before the Circuit Court of Prince William County, Virginia, regarding her conviction on [REDACTED] for violating Virginia Code § 18.2-103. Counsel stated that a new trial date had been set by the court. Counsel stated that the applicant has one misdemeanor conviction and remains eligible for the benefit sought.

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 record reflects that on June 1, 2004, the applicant was convicted in the Prince William County General District Court of the Commonwealth of Virginia of violating Virginia Code section 18.2-103, conceal/price alter merchandise < \$200, a Class 1 misdemeanor. The applicant was ordered to pay court cost and the ten-day jail sentence was suspended. Docket [REDACTED].

On [REDACTED], the applicant was convicted in the Prince William County General District Court of the Commonwealth of Virginia of violating Virginia Code 18.2-103, conceal/price alter merchandise < \$200, a Class 1 misdemeanor. The applicant was sentenced to serve 60 days in jail (50 days were suspended). Docket #. [REDACTED] On or about [REDACTED], the applicant filed an appeal before the Prince William County Circuit Court. On [REDACTED] the applicant pled guilty to violating Virginia Code section 18.2-103. The applicant was sentenced to serve 180 days in jail which was suspended, and she was ordered to pay a fine and court cost. Docket no. [REDACTED]

On [REDACTED] the AAO sent a notice to the applicant, which advised her of the subsequent conviction in Docket no. [REDACTED]. The applicant was further advised that this conviction along with her [REDACTED] conviction rendered her ineligible for TPS. The applicant was provided 30 days in which to submit a response to this notice. To date, however, no correspondence has been received from either the applicant or her counsel.

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.