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



U.S. Citizenship
and Immigration
Services

DATE:

AUG 26 2013

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 sustained.

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 the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel provides the requested court documentation.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. 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.

Section 101(a)(48)(B) of the Act provides, "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

The record contains the following dispositions from the Commonwealth of Virginia:

1. Court documentation in Case no. [REDACTED] from the Rockingham/Harrisonburg General District Court, which indicates that on September 4, 2011, the applicant was arrested for public intoxication, a violation of Virginia Code § 18.2-388, a

Class 4 misdemeanor. On or about September 19, 2011, the applicant was ordered to pay a fine and court cost.

2. Court documentation in Case no. [REDACTED] from the Rockingham/Harrisonburg General District Court, which indicates that on September 4, 2011, the applicant was arrested for obstructing justice. On October 20, 2011, the offense was amended to disorderly conduct, a violation of Virginia Code § 18.2-415, a Class 1 misdemeanor. The applicant was found guilty of violating this offense and was ordered to pay a fine and court cost.
3. Court documentation in Case no. [REDACTED] from the Rockingham/Harrisonburg General District Court, which indicates that on February 28, 2002, the applicant was arrested for public intoxication, a violation of Harrisonburg Code of Ordinance § 16-7-33, a Class 4 misdemeanor. On or about March 13, 2002, the applicant was ordered to pay a fine.

Class 4 misdemeanors in the Commonwealth of Virginia are not punishable by imprisonment, but only by a fine of not more than \$250. Virginia Code § 18.2-11(d). Therefore, for immigration purposes, the offenses in Case nos. [REDACTED] are not misdemeanors as defined in 8 C.F.R. § 244.1.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility, therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn and TPS be reinstated.

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 met this burden.

ORDER: The appeal is sustained.