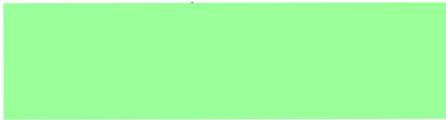




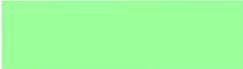
U.S. Citizenship  
and Immigration  
Services

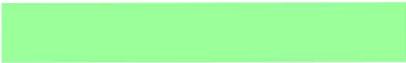
(b)(6)



DATE: FEB 07 2013

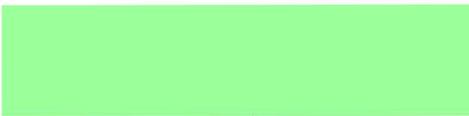
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

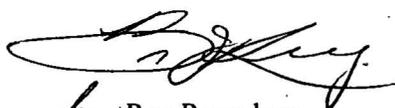
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

Thank you,

  
for Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 and because it was determined that the applicant had two misdemeanor convictions.

On appeal, counsel puts forth a brief disputing the director's findings.

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.

In response to a notice issued on May 11, 2012, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- Court documentation in Case no. [REDACTED] which indicates that on July 24, 2003, the applicant pled guilty to assault and battery, a violation of Virginia Code section 18.2-57.2, a Class 1 misdemeanor. The applicant was sentenced to serve 180 days in jail.

- Court documentation in Case no. [REDACTED] which indicates that on August 13, 2010, the applicant was found guilty of violating Virginia Code 18.2-456, failure to appear. The applicant was ordered to serve 50 days in jail.

The director, in his decision to withdraw TPS on August 3, 2012, determined that the applicant had been convicted of two misdemeanors in the United States. The director noted that the failure to appear violation related to a charge of possession of a controlled substance. The director determined that the issue regarding the drug offense had not been addressed by the applicant.

On appeal, counsel asserts that the court record in Case no. [REDACTED] contained a scrivener's error,<sup>1</sup> as the judge had checked the box "jail" rather than fine of \$50. Counsel submits court documentation certified by the court on August 15, 2012 to corroborate his assertion. The AAO will uphold the court's error and will withdraw the director's finding that the applicant had been convicted of a misdemeanor offense in this case.

Counsel further states that the underlying matter for the failure to appear charge does not relate to the applicant as he was only called as a witness in the case against another individual. A review of the court document in Case no. [REDACTED] indicates that the applicant's offense of failure to appear was in connection with an underlying case [case number omitted] of possession of a controlled substance relating to another individual [name omitted]. Accordingly, the applicant has overcome the director's finding.

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.

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.

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<sup>1</sup> An error resulting from a minor mistake or inadvertence in writing or copying something on the record, and not one that occurs from judicial reasoning or determination. *Black's Law Dictionary*, 622 (9<sup>th</sup> Ed., 2009)