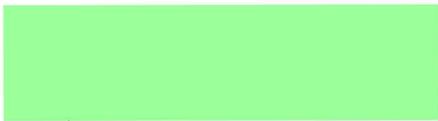




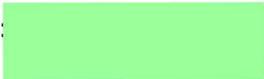
U.S. Citizenship
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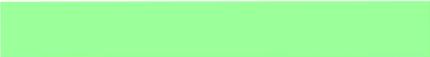
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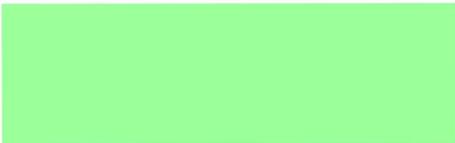
Office: VERMONT SERVICE CENTER

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:

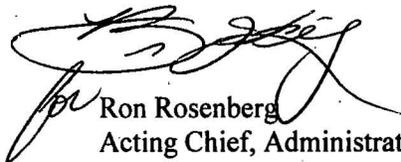


INSTRUCTIONS:

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 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,



Ron Rosenberg
Acting 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 puts forth a brief disputing the director's findings. Counsel states that the offenses should be treated as infractions.

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.

Court documentation from the Superior Court of Los Angeles County, California reflects that on January 10, 2011, the applicant pled nolo contendere to violating section 14601.1(a) CVC, driving while license is suspended or revoked, and section 23103 CVC, reckless driving, both misdemeanors. The applicant was placed on probation for three years and ordered to pay a fine and court costs for violating section 14601.1(a) CVC. The applicant was placed on probation for two years, enrolled in an alcohol and drug education program and was ordered to pay a fine and court costs for violating section 23103 CVC. Case no. 0JB10579.

Upon a first conviction of violating section 14601.1(a) CVC, an individual shall be imprisoned in the county jail for not more than six months or by a fine of not less than \$300 or more than \$1,000, or by both that fine and imprisonment. Section 14601.1(a)(1) CVC.

Upon a conviction of reckless driving, an individual shall be punished by imprisonment in a county jail for not less than five days nor more than 90 days or by a fine of not less than \$145 nor more \$1,000, or by both that fine and imprisonment. Section 23103(c) CVC.

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services (USCIS) has determined that New York violations and infractions should not be considered disqualifying misdemeanors.

On appeal, counsel cites to the above memorandum issued by USCIS and asserts that it "should be expanded to include violations that in California can be charged as an infraction or a misdemeanor." Counsel states that a violation of section 14601.1(a) CVC should not be considered a disqualifying misdemeanor for TPS since "said violation does not even require a *mens rea* of injury to person or property." Counsel asserts that both violations can be deemed an infraction.

The memorandum dated January 17, 2010, has no relevance in this proceeding as it specifically pertains to traffic infractions and violations committed in the state of New York. Counsel's assertion is without merit as the state of California has clearly indicated that these offenses are not infractions. Sections 40000.11 CVC and 40000.15 CVC.

Counsel argues that the applicant's TPS should not have been withdrawn as the court disposition as to whether the applicant was convicted under section 23103(a) or 23103(b) of the vehicle code was vague and ambiguous.

While the court document does not list the specific section of law the applicant was convicted of, the fact remains that an individual who violates section 23103 (a) or 23103(b) of the California Vehicle Code is guilty of reckless driving. A conviction of either section of law carries the same penalty: imprisonment in the county jail for not less than five days nor more than 90 days or by a fine of not less than \$145 nor more \$1,000, or by both that fine and imprisonment. If counsel is challenging the clarity of the court order that issue is not within the purview of the AAO, rather the issue lies within the jurisdiction of the judicial court.

Counsel states that the applicant can return to court and request to have the misdemeanor reduced to an infraction. If the reduction is a result of a rehabilitative action by the court, it should be noted that, under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a

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subsequent state action purporting to erase the original determination of guilt. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

In the instant case, the court documentation submitted reflects that the applicant pled nolo contendere to 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 AAO has reviewed counsel's brief on appeal, and concludes that the misdemeanor convictions continue to affect immigration consequences. 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.

ORDER: The appeal is dismissed.