



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 29 2014

Office: VERMONT SERVICE CENTER

FILE: [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 (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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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. On February 6, 2014, the director withdrew TPS because the applicant had been convicted of at least two misdemeanors in the United States.

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.

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."

In response to the notice issued on September 10, 2013, which requested the applicant to provide certified judgment and conviction documents from the court for all arrests, the applicant submitted:

1. Court documentation in Case no. [REDACTED] from the [REDACTED] County Superior Court (California), which indicates that on October 9, 2002, the applicant pled *nolo contendere* to driving under the influence, a violation of section 23152(a) VC, a misdemeanor. Imposition of sentence was suspended and the applicant was

placed on probation for five years and was ordered to serve two days in jail and pay a fine and court costs. The remaining charges were dismissed.

2. Court documentation in Case no. [REDACTED] from the City of [REDACTED] Municipal Court (North Dakota), which indicates that on September 6, 2012, the applicant pled guilty to duty upon striking an unattended vehicle, a violation of N.D.C.C. 10-8, and reckless driving, a violation of N.D.C.C. 10-29. The court classified both offenses as Class B misdemeanors. For each conviction the applicant received a suspended sentence of 20 days, was ordered to pay a fine, and was placed on probation for one year.

On appeal, counsel provides a motion to withdraw guilty plea for number two above, and an Order to Withdraw Guilty Plea in Case Numbers [REDACTED] from the City of [REDACTED] Municipal Court. On May 29, 2014, the court ordered the previous pleas of guilty be withdrawn and the convictions vacated *nunc pro tunc* on 6th Amendment and due process grounds.

Counsel has provided sufficient documentation from the court indicating that the above misdemeanor convictions for duty upon striking an unattended vehicle and reckless driving have been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, the applicant no longer remains convicted of the above-cited misdemeanor offenses. *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S 2010); *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006), *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The applicant has one misdemeanor conviction (driving under the influence) and it does not render the applicant 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 be withdrawn, and the applicant's TPS will 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.