

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



M,

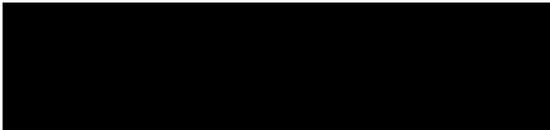
DATE: **FEB 09 2012** Office: VERMONT SERVICE CENTER

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that documentation from the [REDACTED] was previously provided explaining why there was no final disposition at this time. Counsel asserts that she is "submitting a paper regarding the next adjourned date" with the name and telephone number of the applicant's case worker. Counsel states that she is also submitting "proof of the on-going treatment in the form of a certificate of completion of a phase of treatment." Counsel asserts that once the program is completed, the charges are expected to be dismissed and sealed and certified judgment and conviction documentation can be provided.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802).

Section 212(a)(2)(A)(i)(II) of the Act.

The Federal Bureau of Investigation report dated March 26, 2010, reflects that on February 24, 2009, the applicant was arrested by the Mineola County Police of New York for criminal possession of a controlled substance in the third degree with intent to sell and criminal sale of a controlled substance in the third degree.

In response to the Notice of Intent to Withdraw TPS issued on February 8, 2011, which requested the certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- A letter dated March 8, 2011, from counsel indicating that the judgment or disposition of the applicant's arrest on February 24, 2009, could not be provided as it was still pending. Counsel asserted that the applicant was participating in a judicial diversion program that required a minimum of 18 months involvement.
- A N.C.F.T.C. adjournment judicial diversion schedule.

The director determined that the documents submitted were not sufficient as they did not specifically relate to the applicant's case. The director concluded that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on April 15, 2011.

On appeal, counsel submits:

- A document from the [REDACTED] Felony Treatment Court which lists the applicant's name and indicates that the case had been adjourned to May 31, 2011.
- A Certificate of Completion of Phase III dated March 21, 2011, from the [REDACTED] County Felony Treatment Court.

The documents submitted in response to the notice and on appeal are insufficient to overcome the director's finding. No credible evidence from the court has been presented to establish the actual date the applicant entered a diversion program. Without certified documentation of the court's proceedings supporting counsel's claim of the applicant's 18-month participation in a diversion program, her assertion has no merit. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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 from the withdrawal of the TPS application is dismissed.