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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

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DATE: FEB 10 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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, counsel asserts that the applicant was filing Petition fo[redacted] Subsequently, counsel submitted the Opinion and Order from the District Court for Montgomery County, Maryland regarding the applicant's drug conviction.

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.

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.

In response to the notice dated December 6, 2010, which requested certified judgment and conviction documents for all arrests from the courts, the applicant submitted court

documentation in Case no from the District Court of Maryland for Montgomery County, which indicated that on August 30, 2010, he pled guilty to possession of paraphernalia and was ordered to pay a fine. A *nolle prosequi* was entered for the remaining charge. The director determined that due to the applicant's drug conviction he was inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

On appeal, counsel submits an Opinion and Order from the District Court for Montgomery County, Maryland, which indicates the applicant pled *nolo contendere* to possession of marijuana and pled guilty to possession of paraphernalia. the court, in granting the petition, held that the applicant: 1) was not informed of and did not acknowledge the possibility of immigration consequences when offering his plea and 2) suffered prejudice and collateral consequences as a result of his attorney's failure to advise him properly and the court's failure to meet the mandates of Maryland Rule 4-242 in accepting the applicant's plea.

Counsel must inform a client whether his plea carries a risk of deportation. *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S 2010). A conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

The applicant has provided credible evidence to support his assertion that he had not been advised of the possible immigration consequences of a guilty plea by the trial court or his attorney. Therefore, for immigration purposes, the applicant has not been convicted of any drug offense and cannot be found inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The evidence of record reflects that the applicant has no misdemeanor or felony convictions under the related regulations in 8 C.F.R. § 244.4(a), and 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.