

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: APR 15 2013

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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 she had failed to submit requested court documentation relating to her criminal record.

On appeal, counsel resubmits the court documentation regarding the applicant's offenses, and asserts that the applicant did not enter a guilty plea prior to entering a diversionary program under the New Jersey Penal Code section 2C:43-12.

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.

"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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits

committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. 8 U.S.C. § 1182(a)(2)(A)(i).

The Federal Bureau of Investigation report dated January 9, 2012, reflects that on October 10, 2011, the applicant was arrested by the Guttenberg Police Department of New Jersey for theft and burglary by entering structure.

On May 21, 2012, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. On June 25, 2012, the Vermont Service Center received a response from the applicant. The applicant submitted court documents from the Superior Court of New Jersey, which indicated that she entered a pre-trial intervention program on February 6, 2012. The court ordered all further proceedings be and are postponed for a period of 36 months pursuant to N.J.S.A. 2C:43-12 and 13 and R. 3:28.

Under the pre-trial intervention program, a defendant is not required to enter a plea or to admit any facts sufficient to warrant a finding of guilty. The court documents do not indicate that the applicant entered a plea of guilty or *nolo contendere*, nor did the judge find the applicant guilty of the offenses. Therefore, at this time, the final disposition in this court proceeding remains pending. If there is an extension of the designation of TPS for El Salvadorans and upon the filing of a re-registration application by the applicant, the director shall revisit this matter to determine if the applicant is still in the pre-trial intervention program. The applicant still bears the burden of establishing that the program was completed and the charges terminated.

Accordingly, 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.