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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **APR 19 2013**

Office: VERMONT SERVICE CENTER

FILE: [Redacted]
[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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court disposition.

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 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).

On March 2, 2012, a notice was issued which requested the applicant to submit certified judgment and conviction documents for all arrests including the arrests on November 1, 2002 for soliciting for prostitution and on February 10, 2011, for assault on a female.

The applicant, in response, submitted court documentation in Case no. [REDACTED] from the Mecklenburg, County District Court of North Carolina, which indicated that on August 9, 2011, the applicant pled guilty to assault on a female, a violation of NCGS section 14:33, a Class A1 misdemeanor. The applicant was sentenced to serve 60 days in jail, placed on probation for 12 months and ordered to complete a New Options for Violent Actions program.

The applicant also submitted documentation from the Community Service Work Program Office in Charlotte, North Carolina, which indicated that the applicant had successfully completed community services regarding his arrest on November 1, 2002 for soliciting for prostitution, a violation of NCGS 14-204(5).

The director determined that the applicant had failed to submit the requested certified judgment from the court for his arrest on November 1, 2002. Accordingly, on July 9, 2012, the director withdrew the applicant's TPS.

On appeal, counsel submits court documentation in Case no. [REDACTED] which does not indicate that the applicant entered a plea of guilty or *nolo contendere*, or that the judge found the applicant guilty of violating NCGS 14-204(5). The applicant was granted deferred prosecution for violating NCGS 14-204(5) and the document from the Community Service Work Program Office confirms that the applicant had completed the community service work program. On September 5, 2003, the case was dismissed.¹

The applicant has one misdemeanor conviction 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) or inadmissible under section 212(a)(2)(A)(i)(I) of the Act. 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.

¹ The method of disposition lists the abbreviated code "DD" which means deferred prosecution dismissal.