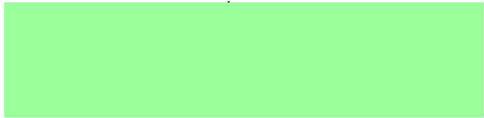




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 22 2013**

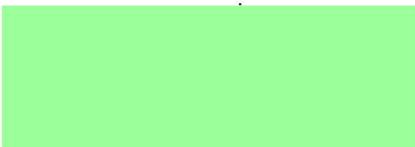
Office: VERMONT SERVICE CENTER

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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, Vermont Service Center. A subsequent appeal and motion were dismissed by the AAO. The matter is before the AAO on a second motion to reopen and reconsider. The motion will be granted. The previous decisions of the AAO will be affirmed.

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 arrests on December 27, 2006 and June 7, 2010. On appeal, counsel submitted court documentation in Case no. [REDACTED] which indicated that the applicant's conviction for driving with .08 percent or more alcohol in the blood had been vacated on June 20, 2011. The AAO, in dismissing the appeal on January 30, 2012, concluded that the applicant remained convicted for immigration purposes as no evidence was provided to indicate that the conviction had been vacated due to procedural or constitutional defect. The AAO also noted that the court documentation relating to an arrest on February 24, 2007, for driving with .08 percent of more alcohol in the blood had not been provided.

On motion, counsel submitted the complete court documentation Case no. [REDACTED] which established that the applicant was arrested on December 27, 2006, for driving under the influence and was booked for the offense on February 24, 2007. Counsel indicated that the applicant's arrest on June 7, 2010 also related to Case no. [REDACTED]. The AAO, in dismissing the motion on August 24, 2012, determined that the court documentation submitted in Case no. [REDACTED] made no reference to an arrest, a booking or to a subsequent charge occurring on June 7, 2010, and therefore, the applicant had failed to provide the final disposition for this arrest. The AAO noted that a subsequent arrest on September 24, 2011 must be addressed in any future proceedings.

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As counsel failed to cite any precedent decisions in support of his motion to reconsider, the motion will be dismissed.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On current motion, counsel submits a brief disputing the findings of the AAO.

On motion, counsel provides the transcript of proceedings and the Order in Case no. [REDACTED] from the Superior Court of San Mateo County, which indicates that on June 20, 2011, the court ordered the applicant's guilty plea set aside and the judgment of guilt vacated *nunc pro tunc*.

A conviction that has been vacated due to procedural or substantive defects in the underlying proceedings is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

Counsel has provided sufficient documentation from the court indicating that the driving with .08 percent or more alcohol in the blood conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, this misdemeanor conviction no longer affects immigration consequences. *Matter of Adamiak, supra, Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

On motion, counsel provides court documentation in Case no. [REDACTED], which indicates that on June 15, 2011, the applicant was charged with violating sections 14601.2(a) VC and 14601.5(a) VC. On August 18, 2011, the applicant pled *nolo contendere* to violating section 14601.2(a) VC, driving while privilege is suspended or revoked for driving under the influence with excessive alcohol. The applicant was placed on probation for 18 months and ordered to serve 10 days in the county jail. On September 24, 2011, the applicant was booked into the county jail.

On motion, counsel provides court documentation in Case no. [REDACTED] which indicates that on September 18, 2011, the applicant violated section 20002(a) VC, hit and run causing property damage. On June 25, 2012, a civil compromise was entered pursuant to sections 1377-1399 PC.

On motion, counsel asserts that the applicant was not convicted for the arrest that occurred on June 7, 2010. Counsel states, "[t]he USCIS cannot deny TPS benefits to an applicant based on allegations of an arrest that never occurred."

The Federal Bureau of Investigation record, via a fingerprint search, revealed that the applicant was "arrested or received" on June 7, 2010 by the Department of Corrections in San Jose, California for one count of driving with .08 percent or more alcohol in the blood and one count of driving under the influence. The court documents and documentation from the Office of the Sheriff of San Mateo County provided on current motion do not indicate the final outcome of these violations. The applicant has the burden to establish, with affirmative evidence, that these offenses were dismissed, were in error or related to Case no. [REDACTED]

Without certified documentation from the court or the arresting or receiving agency indicating the final outcome of the violations on June 7, 2010, , the applicant remains ineligible for TPS due to 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 and the AAO's decisions will be affirmed.

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The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met. Accordingly, the previous decisions of the AAO will not be disturbed.

ORDER: The previous decisions of the AAO dated January 30, 2012, and August 24, 2012 are affirmed.