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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 1 2013

Office: VERMONT SERVICE CENTER [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 TPS because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel asserted that the applicant had been charged with criminal charges that were still pending final disposition. Counsel requested an extension of time to supplement the appeal. Counsel subsequently submits a brief indicating that the applicant does not have two misdemeanor convictions. Counsel asserts that the charge of driving under suspension [redacted] was disposed of with a not guilty verdict on January 3, 2012, and that the charge of driving under the influence is still pending.

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. 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS under this section 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. See 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.

Section 101(a)(48)(B) of the Act provides, "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

The Federal Bureau of Investigation report dated December 27, 2011, reflects the applicant's criminal history in the state of South Carolina as follows:

1. On February 16, 2011, the applicant was arrested by the Sheriff's Office in for driving under the influence and driving under suspension, license not suspended for driving under the influence.
2. On March 9, 2011, the applicant was arrested by the for driving under suspension, license not suspended for driving under the influence.

On June 5, 2012, the applicant was requested to submit certified judgment and convictions documents for all arrests including the arrests of February 16, 2011 and March 9, 2011. Counsel, in response, submitted On-line Public Indexes from the South Carolina printed June 21, 2012, which indicated that the cases relating to the applicant's arrests on February 16, 2011 for driving under suspension and on December 7, 2011 for driving under the influence – 3rd offense were currently pending. The On-line Publix Indexes also indicated that the applicant pled guilty on April 4, 2011 to driving under suspension, a violation of South Carolina Code Ann. § 56-1-460.

On July 27, 2012, the director obtained an updated On-line Public Index from the which indicated:

- For number one, on April 4, 2011, the applicant pled guilty to driving under suspension, a violation of South Carolina Code Ann. § 56-1-460, and driving under the influence – 1st offense, a violation of South Carolina Code Ann. § 56-5-2930. The applicant was sentenced to serve 30 days in jail for each misdemeanor offense.
- The applicant was arrested and subsequently charged on December 7, 2011, for driving under suspension, a violation of South Carolina Code Ann. § 56-1-460, On January 4, 2012, the applicant was found guilty of this misdemeanor offense. The applicant was sentenced to serve 30 days in jail.
- The applicant was arrested on December 7, 2011, and subsequently charged on December 19, 2011, for driving under the influence, a violation of South Carolina Code Ann. § 56-5-2930. The case was pending.

On appeal, counsel submits:

- A letter dated October 18, 2012, from the Assistant Solicitor of the , who indicates that the charge of driving under the influence – 3rd offense is still pending, and that the charge of driving under suspension in Ticket number was disposed of with a not guilty verdict on January 3, 2012.

The AAO will give full faith and credit to the trial court's verdict of January 3, 2012, in Case no. [redacted]

- Court documentation in Case no. [redacted] which indicates that on January 3, 2012, the applicant was found not guilty of violating South Carolina Code Ann. § 56-1-460, driving under suspension.

The applicant remains ineligible for TPS due to his misdemeanor convictions on April 4, 2011. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The applicant has not submitted the requested final court disposition for his arrest on March 9, 2011. The court documents submitted throughout the application process do not indicate that the arrest on March 9, 2011 relates to his arrests on February 16, 2011 and December 7, 2011. Therefore, the applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Accordingly, the applicant's TPS must be withdrawn on this ground as well.

The applicant's TPS will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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 is dismissed.