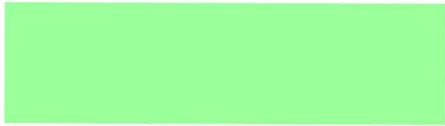


(b)(6)

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

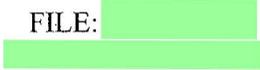


U.S. Citizenship
and Immigration
Services



DATE: **AUG 09 2013**

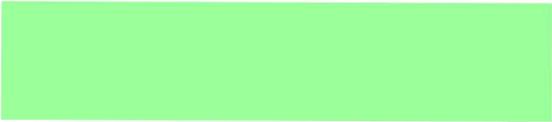
Office: VERMONT SERVICE CENTER

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 (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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 on appeal. The case will be remanded for further consideration and action.

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 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 convicted of simple possession of marijuana. Counsel provides a Certificate of Analysis for the aforementioned arrest.

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.

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.

The record contains court documentation in Case no. [REDACTED] from the [REDACTED] County General District Court of the Commonwealth of Virginia, which indicates that on February 9, 2011, the applicant was found guilty of violating Virginia Code section 18.2-250.1, possession of marijuana-1st offense, a Class 1 misdemeanor. The applicant was sentenced to serve 30 days in jail which was suspended and he was ordered to pay a fine and court cost.

On appeal, counsel submits a Certificate of Analysis from the Department of Forensic Science dated January 7, 2011 and certified by the court. The certificate indicates that the amount of marijuana in the applicant's possession at the time of his arrest was less than 30 grams.

The applicant is inadmissible to the United States under section 212(a) (2)(A)(i)(II) of the Act because he has been convicted of a drug-related offense. However, since the conviction involved simple possession of less than 30 grams of marijuana, there is a waiver available for this ground of inadmissibility. A Form I-601, Application for Waiver of Grounds of Inadmissibility, was neither requested by the director nor furnished by the applicant.

Therefore, the case will be remanded in order for the director to provide the applicant the opportunity to file a Form I-601, and then he shall fully adjudicate the Form I-601 and the Form I-821. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.