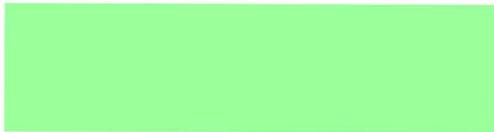




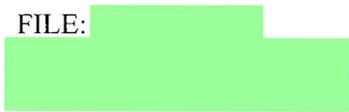
U.S. Citizenship
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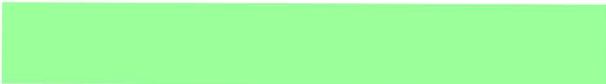
(b)(6)



DATE: **AUG 28 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. 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was rejected by the Administrative Appeals Office (AAO). The AAO reopened the proceedings on its own motion. The AAO will withdraw its previous decision and dismiss the appeal.

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.

On April 16, 2012, the director withdrew TPS because the applicant had been convicted of two or more misdemeanors in the United States. On September 21, 2012, the AAO rejected the appeal as the record, at the time, did not contain the required new Form G-28, Notice of Entry of Appearance as Attorney or Representative. As such, there was no evidence that counsel was authorized to represent the applicant in this proceeding and to file an appeal form on the applicant's behalf. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Subsequently, counsel provided contemporaneous evidence to support his assertion that the required Form G-28 was submitted on September 4, 2012 prior to the decision of the AAO. On June 3, 2013, the AAO reopened the proceedings *sua sponte* and granted the applicant 30 days to submit a brief. Counsel, in response, submitted a copy of the brief that was provided with the filing of the appeal form.

On appeal, counsel argues that the applicant's conviction of failing to stop at a scene of an accident under Virginia law "is really an administrative violation and not a crime." Counsel asserts that the court record clearly indicates that the "alleged" criminal conviction of driving under the influence in 2002 is really a drunk in public offense; that the [REDACTED] and City District court system does not show the case either by correct last name, partial last names, or even case number; and that this is a case of mistaken or crossed identity. Counsel states that police records and the [REDACTED] have an arrest record for and a charge of "drunk in public." Counsel states that the applicant has one petty offense for disturbing the peace/drunken in public. Counsel asserts that the "alleged" 2006 conviction for Driving under the influence is "no OL in possession."

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."

Counsel's brief on appeal has been considered. However, his assertions are not supported by the record. In response to the notice dated February 22, 2012, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided:

1. Certified court documentation in Case no. [REDACTED] from the [REDACTED], which indicates that on [REDACTED] 2006, the applicant was arrested for violating Virginia Code § 18.2-266, driving while intoxicated with .08 percent or more alcohol in the blood, a Class U misdemeanor. On [REDACTED] 2006, the applicant pled guilty to and was found guilty as charged of this offense. The applicant was ordered to pay court cost and a fine of \$750 with \$250 suspended, sentenced to serve six months in jail of which 20 days were suspended, and his driver's license was suspended for three years.
2. A [REDACTED] Summons ordering the applicant to appear before the [REDACTED] on [REDACTED], 2002 for violating Virginia Code § 18.2-266.
3. Certified court documentation in Case no. [REDACTED] from the [REDACTED], which indicates that on [REDACTED] 2002, the applicant was arrested under the alias [REDACTED] for violating Virginia Code § 18.2-266, driving while intoxicated with .08 percent or more alcohol in the blood, a Class 1 misdemeanor. On [REDACTED], the applicant pled guilty to and was found guilty as charged of this offense. The applicant was ordered to pay a fine of \$500 with \$400 suspended and court cost, sentenced to serve 30 days in jail which was suspended, and his driver's license was suspended for 12 months.

4. Certified court documentation in Case no. [REDACTED] from the [REDACTED] [REDACTED] which indicates that on [REDACTED] 2001, the applicant was arrested on [REDACTED] 2001, for violating Virginia Code § 40.2-896, fail to stop at the scene of an accident resulting in damage in the amount in excess of \$250, a Class 1 misdemeanor. On [REDACTED] 2001, the applicant pled guilty to and was found guilty as charged of this offense. The applicant was ordered to pay a fine of \$50 and court cost of \$30.

Any person convicted of violating the provisions of Virginia Code §§ 46.2-895 through 46.2-897 shall, if such accident results in injury to or the death of any person, be guilty of a Class 6 felony. If such accident results only in damage to property, the person so convicted shall be guilty of a Class 1 misdemeanor; however, if the vehicle or other property struck is unattended and such damage is less than \$250, such person shall be guilty of a Class 4 misdemeanor. Virginia Code § 46.2-900.

The punishment for a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both. Virginia Code § 18.2-11(a). As cited above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.* (Emphasis added.)

The record, in this case, clearly reflects that the applicant entered a plea of guilty to each offense, and the court accepted each plea and ordered some form of punishment/penalty and/or restraint on the applicant's liberty. Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw TPS will be affirmed.

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.

Finally, it is noted for the record that at the time the appeal was initially before the AAO, the record of proceedings was under alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file all the TPS applications and supporting documents were consolidated into [REDACTED].

ORDER: The appeal is dismissed.