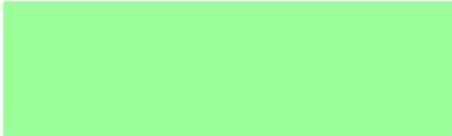




U.S. Citizenship
and Immigration
Services

(b)(6)



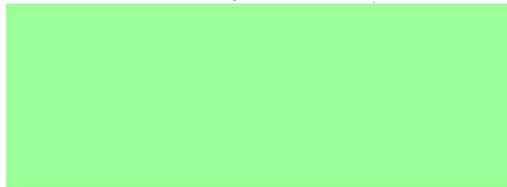
DATE: FEB 07 2013 Office: VERMONT SERVICE CENTER

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel provides the requested court dispositions for the applicant's two arrests.

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 Federal Bureau of Investigation report dated December 15, 2011 reveals that on June 26, 2010 and December 15, 2011, the applicant was arrested or received by the Department for flight – escape, a Class C misdemeanor.

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500. Texas Penal Code section 12.23.

Section 38.01(2) of the Texas Penal Code defines "Escape" as unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

In response to the notice issued on May 18, 2012, which requested the applicant to provide certified judgment and conviction documents for all arrests, the applicant submitted a letter dated June 14, 2012, from the indicating that on: 1) June 26, 2010, the applicant was charged with two traffic offenses and paid a fine of \$277.10 on June 28, 2010; and

2) April 8, 2011, the applicant was charged with four traffic offenses and paid a fine of \$1,012.70 on April 10, 2011.

The director determined that the letter from the [REDACTED] was insufficient as it was not the requested certified judgment and conviction documents from the courts. Accordingly, on July 31, 2012, the director withdrew the applicant's TPS.

On appeal, counsel submits court documents from the [REDACTED] Court of Texas, which indicated that the applicant pled guilty to several traffic infractions and was ordered to pay a fine for each offense. The court documents also indicate the following:

- The offenses of failure to appear (Cause no. [REDACTED]) and permitting an unlicensed person to operate a motor vehicle (Cause no. [REDACTED]) were dismissed on April 11, 2001.
- Order of Commitment in Cause no. [REDACTED] and Cause no. [REDACTED] dated June 26, 2010, regarding Class C misdemeanor convictions on February 2, 2010 of no front/rear license plate and turning where prohibited by sign. The applicant was ordered to be taken into custody and committed to jail for failure to pay the fines. On June 28, 2010, the applicant was credited for time served.

Counsel, on appeal, has provided primary evidence from the [REDACTED] Court which reflects that the applicant has no misdemeanor convictions for immigration purposes. Based on the documentation provided on appeal, the applicant has overcome the sole ground for the withdrawal of his TPS. There are no other known grounds of ineligibility, therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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 case is remanded for appropriate action consistent with the above.