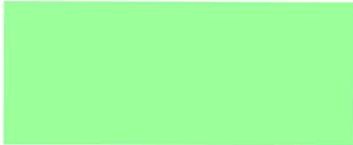


(b)(6)

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



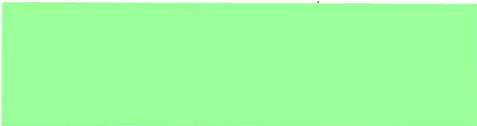
DATE: **FEB 19 2013** Office: VERMONT SERVICE CENTER

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:

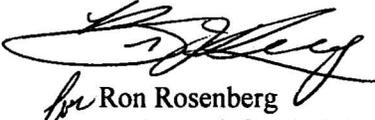


INSTRUCTIONS:

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,


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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that the documents submitted in response to the notice of May 21, 2012, was in fact the criminal disposition from the New York State Court. Counsel submits copies of documents that were previously provided.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits

committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Federal Bureau of Investigation report indicates that on February 11 1993, the applicant was arrested by the [REDACTED] of New York for endangering the welfare of a child, a Class D Felony and sex abuse – 1st offense, a Class A misdemeanor.

On January 22, 2004, September 12, 2005, and May 21, 2012, the applicant was requested to submit certified judgment and conviction documents from the court for all arrests. Each time, the applicant provided a local court criminal disposition report in Case no. [REDACTED] which listed the charges of sexual abuse – 1st offense and endanger the welfare of a child; however, no disposition was indicated. In her statement of June 5, 2012, the applicant states in pertinent part:

The person that has been charge with this crime is another person. This can be verified because this person's name is different than mine. That person's name is [REDACTED]. My name is [REDACTED].

Therefore, I feel that this offense has been erroneously filed against me, and that I am not or have never been the person that has been arrested for the foresaid charge.

However, in her statement of February 3, 2004, the applicant stated, in pertinent part, "when I was arrested I gave my full name. In the process of translation, it resulted as [REDACTED]. I had to personally travel to the state of New York to obtain a court disposition and was told that every thing was cleared nothing was pending."

In her statement of February 10, 2004, the applicant stated, in pertinent part: "I was wrongfully accused for something I did not commit. I was detained for four days but since they had nothing against me I was released."

The statements of counsel and the applicant have been considered; however, they do not overcome the director's findings. The applicant's criminal record was obtained through a FBI fingerprint comparison and none of the court documents submitted provides sufficient explanatory information to enable the AAO to determine whether the offenses were dismissed. The applicant has the burden to establish with affirmative evidence that the offenses were either dismissed or were in error.

The applicant is therefore ineligible for TPS because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

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Page 4

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.