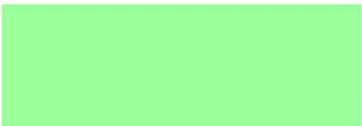


(b)(6)

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



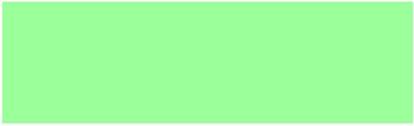
DATE: FEB 19 2009 Office: VERMONT SERVICE CENTER

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

(b)(6)

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that the applicant's arrest on August 10, 2007 was dismissed in court. Counsel, citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S. 2010), asserts that the applicant is challenging his conviction of July 17, 2009, as he was not advised of the immigration consequences of a guilty plea. Counsel submits an affidavit from the applicant to corroborate his statement. Counsel submits a copy of a Motion to Vacate and Motion for a New Trial addressed to the [REDACTED] of the Commonwealth of Massachusetts. Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than seven months later, no additional correspondence has been presented by counsel or the applicant.

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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The Federal Bureau of Investigation report of January 10, 2012 reflects the following offenses in the state of Massachusetts:

1. On August 10, 2007, the applicant was arrested by the [REDACTED] Department for violating a city/town ordinance.
2. On March 26, 2009, the applicant was arrested by the [REDACTED] for OUI drugs, 2nd offense, open alcohol container in motor vehicle, leave scene of property damage and leave scene of personal injury.
3. On March 27, 2009, the applicant was arrested or received by the [REDACTED] for OUI-liquor.

On March 13, 2012, a notice was issued, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests. The director determined that the applicant had failed to respond to the notice by April 15, 2012, and withdrew the applicant's TPS on May 14, 2012.

It is noted that a review of the record reflects that a response to the notice of March 13, 2012, was received at the Vermont Service Center on March 19, 2012. The applicant's response will be considered on appeal.

In response, to the notice of March 13, 2012, the applicant submitted:

- Court documentation in Case no. [REDACTED] from the [REDACTED] which indicates that on March 27, 2009, the applicant was charged with count one, operating motor vehicle under influence of liquor, a violation of M.G.L. chapter 90, section 24(1)(a)(1); count two, leave scene of personal injury, a violation of M.G.L. chapter 90, section 24(2)(a1/2)(1); count three, leave scene of property damage, a violation of M.G.L. chapter 90, section 24(2)(a); and count four, alcohol in motor vehicle, possess open container, a violation of M.G.L. chapter 90, section 241. On July 17, 2009, the applicant pled guilty to count one, operating motor vehicle under influence of liquor. The applicant was ordered to attend a 14-day in-patient program, pay administrative fees, and have random breath screening and loss of driver's license for two years. For count two, leaving scene of property damage, the applicant admitted to sufficient facts.² Sufficient facts were found and the case was continued without finding until July 14, 2010.

² An admission to "sufficient facts" is deemed to be an admission to facts sufficient to warrant a finding of guilt. See *Luk v. Commonwealth*, 658 N.E.2d 664, 667 n.6 (Mass. 1995) (citing *Commonwealth v. Duquette*, 386 Mass. 834, 438 N.E.2d 334, 337 (1982)).

- Court documentation in Case no. [REDACTED] from the [REDACTED], which indicates that on April 11, 2008, the applicant admitted to sufficient facts to operating motor vehicle under influence of liquor, a violation of M.G.L. chapter 90, section 24(1)(a)(1). Sufficient facts were found and the case was continued without finding (CWOFF) until April 10, 2009. The applicant was placed on probation and was ordered to attend two court ordered alcohol programs and pay court costs. On July 17, 2009, CWOFF was vacated and a guilty finding was entered, disposition vacated, probation was terminated and the applicant was discharged.

On appeal, the applicant provides an additional copy of the court documents in Case no. [REDACTED]. The applicant also submits court documentation in Case no. [REDACTED] for number one above, which indicates that on August 13, 2007, the municipal ordinance violation was dismissed as the applicant had paid the required court cost.

The Motion to Vacate submitted on appeal has little probative value as it does not establish that it was filed in court. Further, no credible evidence has been provided to support counsel's assertion that the applicant had not been advised of the possible immigration consequences of a guilty plea by either his counsel or the trial court. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without certified documentation from the court indicating that the convictions have been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor convictions continue to effect immigration consequences. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006), *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

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). 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.

ORDER: The appeal is dismissed.