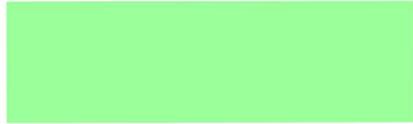




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 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 in your case.

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the "applicant's convictions are in dispute, and not final. A hearing is scheduled in light of recent case law. Further, the charges are no misdemeanors under Title 8 CFR 244.1." 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.<sup>1</sup> However, more than seven months later, no additional correspondence has been presented by either 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 punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

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<sup>1</sup> 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.

In response to the notice issued on July 20, 2012, which requested the applicant to provide certified judgment and conviction documents from the court(s) for all arrests, the applicant submitted:

1. Court documentation from the [REDACTED] General District Court of the Commonwealth of Virginia, which indicates that on June 4, 2005, the applicant violated section 5-4-1, trespassing. On July 11, 2005, the applicant was found guilty of this Class 1 misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]
2. Court documentation from the [REDACTED] General District Court of the Commonwealth of Virginia, which indicates that on June 24, 2007, the applicant violated section 18.2-266, driving while intoxicated with .08% or more blood alcohol level. On October 16, 2007, the applicant pled guilty to the Class 1 misdemeanor offense. The applicant was ordered to pay a fine, ordered to serve 180 days in jail (which was suspended) and was placed on probation for one year. Case no. [REDACTED]

On appeal, counsel asserts that the applicant's convictions are in dispute and are not misdemeanors. The assertions of counsel, however, do 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). The court documents provided clearly indicate that the applicant was found guilty of trespassing and driving while intoxicated, both Class 1 misdemeanors. 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 Roldan*, 22 I&N Dec. 512 (BIA 1999), *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.

**ORDER:** The appeal is dismissed.