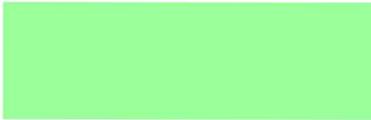




U.S. Citizenship
and Immigration
Services

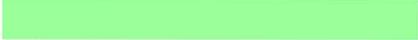
(b)(6)



DATE: **MAR 04 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

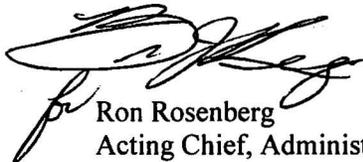
ON BEHALF OF APPLICANT: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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, the applicant asserts that his conviction of driving while intoxicated on October 6, 2002 does not qualify as a misdemeanor because he was never sentenced to jail; his sentence was probated.

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.

The Federal Bureau of Investigation report dated January 12, 2012, indicates the applicant's criminal history in the state of Texas as follows:

1. On October 6, 2002, the applicant was arrested by the Houston Police Department for driving while intoxicated.
2. On October 23, 2010, the applicant was arrested by the Houston Police Department for a liquor violation, a Class C misdemeanor.

3. On February 9, 2011, the applicant was arrested by the Houston Police Department for driving while intoxicated 2nd.

In response to the notice issued on April 24, 2012, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- Court documentation in Case no. [REDACTED] from the Harris County District Clerk of Houston, Texas, which indicates that on March 14, 2011, the applicant pled guilty to driving while intoxicated -2nd offense, a violation of Texas Penal Code section 49.09(a), a Class A misdemeanor. The applicant was sentenced to serve 70 days in jail.
- Court documentation in Case no. [REDACTED] from the Harris County District Clerk of Houston, Texas, which indicates that on December 10, 2002, the applicant pled guilty to driving while intoxicated -2nd offense, a violation of Texas Penal Code section 49.09(a), a Class B misdemeanor. The applicant was sentenced to serve 180 days in jail which was suspended, ordered to pay a fine and was placed on probation for one year.

The applicant's statements made on appeal have been considered. However, as cited above, 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.*

In the instant case, the court documents submitted reflect that the applicant pled guilty to each charge, and the judge ordered some form of punishment and/or penalty to each charge above. Therefore, for immigration purposes, the applicant has been convicted of both 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). 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.