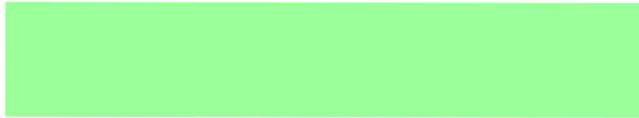


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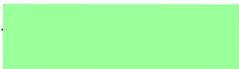


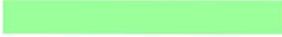
U.S. Citizenship
and Immigration
Services



DATE: **MAR 04 2013**

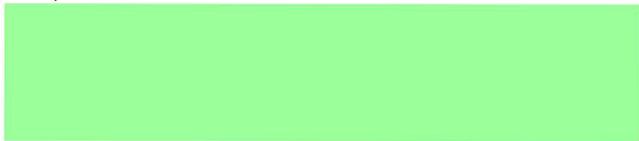
Office: VERMONT SERVICE CENTER

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 charge of driving with license expired is a local ordinance violation. Counsel states that the applicant's two charges, "arose from the same arrest. They are not two separate misdemeanor convictions resulting from separate incidents."

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 10, 2012, indicates that on: 1) June 28, 2008, the applicant was arrested by the Monroe Police Department of Georgia for driving under the influence of alcohol, a violation of Georgia Code section 40-6-391(a)(1); and 2) April 4, 2011, the applicant was arrested by the Atlanta Police Department of Georgia for driving without a valid license, a violation of Georgia Code section 40-5-20(a).

In response to the notice of March 30, 2012, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- Court documentation in Docket no. [REDACTED] from the Monroe Municipal Court, which indicates that on July 24, 2008, the applicant pled guilty to driving under the influence of alcohol, a misdemeanor. The applicant was sentenced to serve two days in jail, ordered to pay a fine and was placed on probation for one year.
- Court documentation in Docket no. [REDACTED] from the Monroe Municipal Court, which indicates that on July 24, 2008, the applicant pled guilty to driving while license expired, a violation of Georgia Code section 40-5-20(a), a misdemeanor. The applicant was ordered to pay a fine and was placed on probation for one year.
- Court documentation in Citation [REDACTED] dated April 16, 2012, from the court clerk of the City of Atlanta Municipal Court, which cites the applicant's arrest and subsequent disposition on April 5, 2011 for no driver's license. The document indicates that the applicant has satisfied his obligations to the court for the referenced citation.

Counsel's assertions on appeal are without merit. Effective July 1, 2008, any person who violates subsection Georgia Code section 40-5-20(a) shall be punished as provided in Georgia Code section 40-5-121.¹ Georgia Code section 40-50-121(a) reads, in part:

Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00

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.*

¹ See 2008 Georgia Laws Act 778 (S.B. 350).

Counsel's assertion that the offenses arose in a single occasion and, therefore, the applicant was convicted of a single misdemeanor offense, cannot be accepted. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Act, this determination has no bearing on the applicant's eligibility for TPS. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court dispositions, the applicant was charged with two separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses.

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 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.