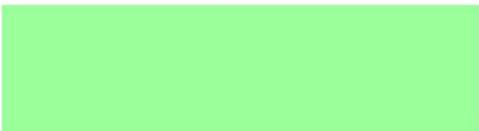




U.S. Citizenship
and Immigration
Services

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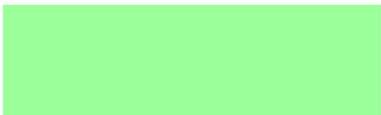
DATE: **MAR 04 2013** Office: VERMONT SERVICE CENTER

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The appeal will be sustained.

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 he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits additional copies of the court documentation.

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).

"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.

On May 8, 2012, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests including the arrest on November 1, 2010 for hit and run-personal injury attended property damage, a Class 5 felony, and no driver's license, a Class 2 misdemeanor.

The applicant's response, which was received on May 30, 2012, consisted of a letter dated May 16, 2012, from the Arlington County Detention Facility of Virginia regarding the applicant's dates of incarceration.

On August 14, 2012, additional evidence was received at the Vermont Service Center, which consisted:

1. Court documentation in Case no. [REDACTED] from the Arlington General District Court, which indicates that on December 2, 2010, the felony offense of Virginia Code section 46.2-894, was amended to a Class 1 misdemeanor, hit and run – property damage. The applicant was convicted of this offense and was sentenced to serve 360 days in jail (280 days were suspended).
2. Court documentation in Case no. [REDACTED] from the Arlington General District Court, which indicates that on December 2, 2010, the offense of no driver's license was *nolle prosequi* on prosecution's motion.

It is noted for the record that although the requested evidence was submitted a day before the issuance of the director's decision of August 15, 2012, said response was not entered into the database until the next day.

The applicant has one misdemeanor conviction and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

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 met this burden.

ORDER: The appeal is sustained.