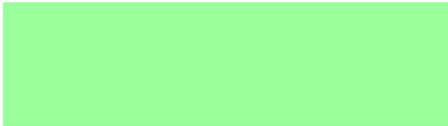


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U.S. Citizenship
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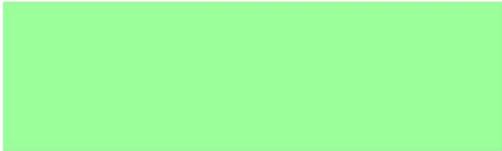


DATE: **MAR 04 2013** Office: VERMONT SERVICE CENTER FILE:

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that the director erred in not properly considering all the factors and documentations submitted with the applicant's application. 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 six 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. 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.

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.

The Federal Bureau of Investigation report dated January 10, 2012, indicates that on: 1) September 14, 2002, the applicant was arrested by the [REDACTED] of Missouri for driving while intoxicated and left the scene of a motor vehicle accident; and 2) March 17, 2011, the applicant was arrested by the Sheriff's Office of [REDACTED], Missouri for driving while intoxicated.

In response to the notice issued on May 11, 2012, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, counsel submitted:

- A court document from the Circuit Court of [REDACTED] Missouri, which indicates that the court entered a memorandum of nolle prosequi in Case no. [REDACTED].
- Court document in Case no. [REDACTED] indicating that on September 21, 2011, the applicant pled guilty to operating a motor vehicle on highway while driver's license/privilege was revoked. The applicant was ordered to pay a fine. This conviction does not qualify as a misdemeanor for immigration purposes as upon a first violation, an individual shall be punished by a fine not to exceed \$300. M.R.S. section 302.321.2.

Counsel also submitted a letter dated June 12, 2012, indicating that the applicant's arrest on March 17, 2011 relates to Case no. [REDACTED] which was dismissed by the court. However, as this court document does not indicate the offense and/or date of arrest, it cannot be concluded that it relates to the applicant's arrest on March 17, 2011.

Counsel states that the applicant's arrest on September 14, 2002 resulted in a misdemeanor conviction of leaving the scene of a motor vehicle accident. Regarding the driving while intoxicated arrest on September 14, 2002, counsel asserts, "the 2002 Excessive Blood Alcohol Content (a lesser charge than the original DWI) is not termed a misdemeanor (and neither is the DWI section as originally charged)."

Counsel, however, has not provided any evidence to support his letter. The assertions of counsel 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 director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on July 17, 2012.

The applicant, has the burden to establish, with affirmative evidence that outstanding charges were dismissed or were in error. A letter from counsel is not affirmative evidence and fails to meet the applicant's burden. Thus, contrary to the argument made in the brief submitted in support of his appeal, the applicant did not submit sufficient evidence to establish the final court dispositions of his arrests on September 14, 2002 and March 17, 2011. To date, the requested certified court documentation has not been submitted. Therefore, the record must be considered complete.

The applicant has failed to provide any evidence revealing the final court dispositions of his arrests detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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 from the withdrawal of the TPS application is dismissed.