



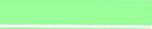
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 05 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. § 1254a

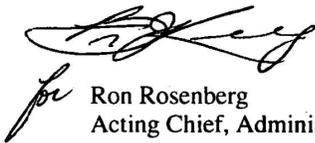
ON BEHALF OF APPLICANT:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a citizen of El Salvador who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application, on June 8, 2001 which was subsequently approved. The director withdrew TPS on May 16, 2012, after determining that the applicant failed to provide requested final court disposition for an arrest on April 9, 2011.

On appeal, counsel contends that the applicant is eligible for TPS because the applicant had provided court documentation that establishes that he had not been convicted of an offense as the court deferred adjudication of guilt in the matter. Counsel further contends that even if the applicant is deemed to have a misdemeanor conviction, he is still eligible for TPS. With the appeal, counsel submits the final court disposition for the applicant's arrest on April 9, 2011, when he was charged with public intoxication.

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).

Section 244(c)(2)(B)(i) of the Act provides that an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States.

"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.

Under section 101(a)(48) of the Act:

(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

The record reflects that the final court disposition, dated May 25, 2012, from the Municipal Court, [REDACTED] Texas, reveals that on April 9, 2011, the applicant was charged with public intoxication, a Class C misdemeanor, to which the applicant plead *nolo contendere* on May 4, 2011, was fined \$365.00 and was granted 180 days deferred disposition; and, after completion of the deferred disposition, a municipal court judge ordered the case dismissed on November 30, 2011. Cause no. [REDACTED]

Despite the dismissal of the case the applicant remains convicted for immigration purposes as he entered a plea of *nolo contendere* to the misdemeanor charge of public intoxication and the judge order some form of penalty. See section 101(a)(48) of the Act. However, the applicant is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act as he does not have a felony conviction or two misdemeanor convictions. Accordingly, 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.

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<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).