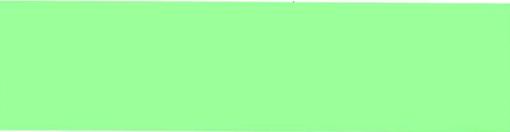




U.S. Citizenship
and Immigration
Services

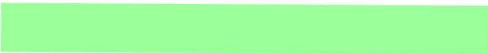
(b)(6)



DATE: **MAR 25 2013**

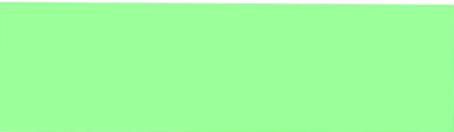
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

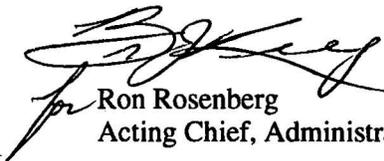
ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 asserts that no final disposition has been issued for the applicant's arrests. Counsel states that the applicant's charges do not constitute convictions under the section 101(a)(48)(A) of the Act.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits

(b)(6)

Page 3

committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. 8 U.S.C. § 1182(a)(2)(A)(i).

The Federal Bureau of Investigation report dated January 12, 2012, indicates that on July 17, 2010, the applicant was arrested by the Police Department of [REDACTED], Massachusetts for assault and battery and resisting arrest.

A notice was issued on May 11, 2012, requesting the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant was provided 33 days in which to submit the requested documentation. The applicant, however, failed to respond to the notice. Accordingly, 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 23, 2012.

On appeal, counsel submits certified court documentation in Case no. [REDACTED] from the [REDACTED] which indicates that the charges of assault and battery, a violation of M.G.L. chapter 265 § 13A(a), and assault and battery on a police officer, a violation of M.G.L. chapter 265 § 13D, is an active case with no final disposition.

The applicant has submitted sufficient evidence to overcome the director's finding. Because the court proceedings for the above charges are currently pending, the applicant cannot be found ineligible for TPS under section 8 C.F.R. § 244.14(a)(1). *The final court disposition of the applicant's arrest on July 17, 2010, shall be addressed by the director in any future proceedings.* Consequently, the director's decision to withdraw TPS will, itself, be withdrawn, and the appeal will be sustained.

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.