



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 15 2013** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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's decision is erroneous as the applicant previously submitted adequate documentation "showing that information gleaned by USCIS from law enforcement records DID NOT show he had been convicted of any felony nor two or more misdemeanors." Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within thirty (30) days.¹ However, more than nine months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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.

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 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 (FBI) report reflects the applicant's criminal history in the state of Georgia as follows:

1. On December 11, 1999, the applicant was arrested by the [REDACTED] Police Department of Georgia for simple assault.
2. On July 7, 2008, the applicant was arrested by the [REDACTED] Sheriff's Office of Georgia for aggravated assault.
3. On February 8, 2011, the applicant was arrested by the [REDACTED] Sheriff's Office of Georgia for driving without a valid driver's license.

On March 2, 2012, a notice was issued requesting the applicant to submit certified judgment and convictions documents from the courts for all arrests. Counsel, in response, provided court documentation in Case no. [REDACTED] from the [REDACTED] Georgia, which indicated that on February 28, 2000, the charge of simple battery was dismissed prior to accusation.

Regarding the arrest in number two, counsel asserted that the case is still pending and that "the case is dormant and unlikely to result in any conviction of [the applicant]." Regarding the remaining arrest, counsel asserted that the applicant was not arrested on February 8, 2011. Counsel stated that he has searched diligently the records for the Municipal and State Courts for [REDACTED] and "there is no record of any such arrest nor resulting charges."

The director determined that it was necessary for the applicant to submit documentation from the court to support counsel's assertion that the case regarding his arrest on July 7, 2008 was still pending. The director further determined that the applicant had failed to submit any documentation addressing his arrest on February 8, 2011. Accordingly, on June 26, 2012, the director withdrew the applicant's TPS.

The applicant's criminal record was obtained through a FBI fingerprint comparison and he has not provided any credible objective evidence to support his assertion that the case in number two is still pending and that there is no record for his arrest in number three. Likewise, a statement made by counsel is not affirmative evidence and fails to meet the applicant's burden. The assertion of counsel does 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 applicant has the burden to establish, with affirmative evidence, that outstanding charges were dismissed, were in error or are still pending.

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.