



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

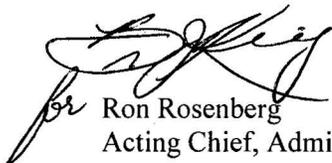
ON BEHALF OF APPLICANT:
[REDACTED]

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,


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel, citing several case laws, argues that the director erred in his decision when he terminated the applicant's TPS by erroneously determining the crimes did not arise out of a single scheme of criminal misconduct.

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).

An alien shall not be eligible for TPS under this section 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. See 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.

The Federal Bureau of Investigation report dated January 9, 2012, reflects that on June 9, 2007, the applicant was arrested by the [REDACTED], Florida for burglary and larceny.

In response to the notice of March 13, 2012, which requested the applicant to provide certified judgment and conviction documents for all arrests, the applicant submitted court documentation in Case no. [REDACTED] from the [REDACTED] Florida. The court documentation indicates that on August 22, 2007, the applicant pled guilty to

count one, petit theft - property value under \$300, a violation of Florida Statute 812.0142(e), and count two, a lesser offense of trespass structure or conveyance, a violation of Florida Statute 810.082(a), both misdemeanors of the first degree. The applicant was ordered to pay a fine and court cost (\$472.50 for count one and \$282.50 for count two), was sentenced to serve 180 days (each count concurrent) which was suspended, and was ordered to perform 50 hours of community service.

Counsel's assertion that the offenses arose in a single occasion and, therefore, the applicant was convicted of a single misdemeanor offense, cannot be accepted. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court disposition, the applicant was charged with two separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses.

Counsel asserts that the convictions should not count for immigration purposes as the applicant "was never sentenced to time in jail he was placed on a suspended sentence concurrent."

In the instant case, the court documentation submitted indicates that the applicant pled guilty to each charge, and the judge ordered some form of penalty to each charge above. Therefore, for immigration purposes, the applicant has been convicted of each misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(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 is dismissed.