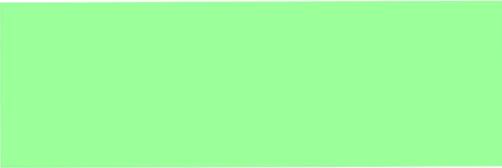


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

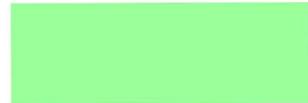


U.S. Citizenship
and Immigration
Services

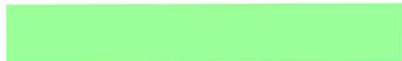


DATE: **MAY 28 2013**

Office: VERMONT SERVICE CENTER



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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action.

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 it was determined that he had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant through counsel states that the director's decision is in error as every charge and disposition reflected a resolution.

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.

The record contains:

1. A City of Aurora Municipal Court Disposition Screen Report, which indicates that on December 10, 2008, the applicant pled guilty to "battery upon" and "assault – attempted B". The applicant was ordered to pay a fine (\$200), court cost (\$35) and victim witness advocacy fund (\$29) for violating the charge of battery. Summons no. [REDACTED]

The report does not specify the classification of each offense. As the court proceedings were handled in the Municipal Court of Aurora, Colorado and because the punishment received was only a fine, the AAO concludes that the applicant pled guilty to *misdemeanor* offenses.

Although the applicant pled guilty to each offense, the judge only imposed a penalty for the battery charge. Therefore, for immigration purposes, the applicant has been convicted of a single misdemeanor in summons no. [REDACTED] Section 101(a)(48)(A) of the Act.

2. A City of Aurora Municipal Court Disposition Screen Reports, which indicates that on July 12, 2005, the applicant pled guilty to no insurance in possession, a violation of C.R.S. 42-4-1409, a Class 1 misdemeanor. The applicant was ordered to pay a fine (\$500) and court cost (\$15). Summons no. [REDACTED]

This conviction does not meet the definition of a misdemeanor for immigration purposes as the maximum punishment for a first offense of violating C.R.S. 42-4-1409 is only a fine. C.R.S. 42-4-1409(4)(a).

3. A City of Aurora Municipal Court Disposition Screen Reports, which indicates that on February 13, 2008, the applicant pled guilty to drove defective or unsafe vehicle, a Class A infraction. Summons no. [REDACTED]

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.