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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 30 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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, the applicant through counsel submits the requested court documents.

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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Federal Bureau of Investigation report dated January 12, 2012, reflects the applicant's criminal record in the state of Arkansas as follows:

1. On December 4, 2008, the applicant was arrested or received by the Sheriff's Office in Bentonville for failure to appear.
2. On May 8, 2010, the applicant was arrested or received by the Lowell Police Department for criminal contempt.

3. On May 8, 2010, the applicant was arrested or received by the [REDACTED] Police Department for obstructing government operations and driving while license is suspended/revoked.
4. On November 5, 2010, the applicant was arrested or received by the [REDACTED] Highway Patrol for driving under suspension.
5. On March 6, 2011, the applicant was arrested or received by the [REDACTED] Department for criminal contempt.
6. On March 6, 2011, the applicant was arrested or received by the [REDACTED] Police Department for failure to appear.
7. On March 6, 2011, the applicant was arrested or received by the [REDACTED] Department for failure to appear.

On April 4, 2012, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. The director concluded that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on June 14, 2012.

The record, however, reflects that the applicant submitted some of the requested court documents, which were received (May 2, 2012) at the Vermont Service Center prior to the issuance of the director's decision. The director's decision did not address these court documents. The applicant's response will be considered on appeal.

The applicant, in response to the notice of April 4, 2012, submitted:

- For number three above, a complaint and uniform traffic ticket from the [REDACTED] Police Department indicating that all charges were *nolle prossed*. Ticket no. [REDACTED]
- For number six above, a complaint and uniform traffic ticket from the [REDACTED] Police Department indicating a court date of September 15, 2011.
- Court documentation from the [REDACTED] Court, which indicates that on December 16, 2008 and on February 17, 2009, the applicant was found guilty of driving on a suspended license (offense dates November 10, 2008 and January 1 2009), a violation of Arkansas Code Ann. section 27-16-303(a)(1), both misdemeanors. The applicant was ordered to pay a fine for each offense. Case nos. [REDACTED]
- Court documentation from the [REDACTED] Court, which indicates that on March 22, 2002 and January 22, 2004, the applicant was found guilty of no driver's license (offense dates March 9, 2002 and January 11 2004), a violation of Arkansas Code Ann. section 27-16-602(a), both misdemeanors. The applicant was ordered to pay a fine for each offense. Case nos. [REDACTED]
- Court documentation from the [REDACTED] Court – Rogers Division, which indicates that on January 12, 2009 and July 21, 2011, the

applicant pled guilty to contempt – fail to pay fine (offense dates July 3, 2008 and May 4, 2009), both Class C misdemeanors. The applicant was ordered to pay a fine and court cost for each offense. Case nos. [REDACTED]

- Court documentation from the [REDACTED] Court, which indicates that on January 13, 2009, the applicant pled guilty for failure to appear (offense date October 29, 2008), a violation of Arkansas Code Ann. section 5-54-120, a Class C misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]
- Court documentation from the [REDACTED] Court – Lowell Division, which indicates that on January 15, 2009, the applicant was charged with driving on a suspended or revoked driver's license (offense date January 12, 2009), a violation of Arkansas Code Ann. section 27-16-303(a)(1), a misdemeanor. On February 12, 2009, the applicant pled guilty to the offense and he was ordered to pay a fine and court cost. Case no. [REDACTED]
- Court documentation from the [REDACTED] Court – Lowell Division, which indicates that on April 6, 2009, the applicant was charged with failure to pay fines and court costs (offense date March 5, 2009), a Class C misdemeanor. On September 27, 2011, the charge was dismissed. Case no. [REDACTED]
- Court documentation from the [REDACTED] Court – Lowell Division, which indicates that on June 30, 2010, the applicant was charged with failure to appear, a violation of Arkansas Code Ann. section 5-54-120, a Class C misdemeanor. On September 27, 2011, the applicant pled guilty to the offense, and was ordered to pay a fine and court cost. Case no. [REDACTED]

On appeal, counsel re-submits some of the court documents mentioned above along with:

- For number three above, court documentation from the [REDACTED] Court, which indicates the charges were *nolle prosequi*. Case no. [REDACTED]
- Court documentation, which indicates that on September 15, 2011, the applicant was found guilty of failure to appear (offense date June 4, 2010), a violation of Arkansas Code Ann. section 5-54-120, a Class C misdemeanor. The applicant was ordered to pay a fine and court cost. Docket no. [REDACTED]
- Court documentation from [REDACTED] Clerk of Court, which indicates on July 9, 2012, the applicant pled guilty to driving while license privilege is suspended (offense date November 5, 2010), a violation of Arkansas Code Ann. section 27-16-303(a)(1), a misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]

On appeal, counsel asserts that the applicant's arrests constitute a single crime arising out of a single scheme of conduct. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Act, or to eligibility under deferred action, this determination has no bearing on the applicant's eligibility for TPS. *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 documents, the applicant was charged with separate violations to which he pled guilty to separate crimes and the court ordered separate penalties. Therefore, the applicant has been convicted of separate and distinct offenses.

Based on the court documents submitted, the applicant has been convicted of at least two misdemeanors and is therefore ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

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.