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



U.S. Citizenship  
and Immigration  
Services

DATE: **OCT 29 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, counsel asserts that a first offense of operating a motor vehicle under the influence does not constitute a misdemeanor as it is not punishable by imprisonment.

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 record contains:

1. Court documentation from the [REDACTED] Municipal Court, which indicates that on September 4, 2008, the applicant pled no contest to violating Wisconsin Statute § 346.63(1)(A), operating motor vehicle under the influence. The applicant was ordered to pay a \$716 fine. Citation #J239169-0.
2. Court documentation from [REDACTED] Municipal Court, which indicates that on May 20, 2010, the applicant was found guilty of violating Wisconsin Statute

§ 947.01, disorderly conduct. The applicant was ordered to pay a \$177 fine. Case no. AD027841.

On September 16, 2013, the AAO sent a notice to the applicant informing him that the brief and evidence submitted on appeal by his counsel did not overcome the director's findings and that it was the AAO's intent to dismiss the appeal. The applicant was advised that pursuant to Wisconsin Statute § 346.65(2)(am)(1), any person violating § 346.63(1) shall forfeit not less than \$150 nor more than \$300 for a first offense. However, based on the amount he was ordered to pay, the offense appeared to be a second violation. The applicant was advised that a second violation of Wisconsin Statute § 346.63(1) results in a fine of not less than \$350 nor more than \$1100 and imprisonment for not less than five days nor more than six months. Wisconsin Statute § 346.65(2)(am)(2).

The applicant was requested to submit, within 30 days, certified complete court proceedings or a certified letter from the District Attorney's office which addressed whether the conviction of Wisconsin Statute § 346.63(1) was a first or second offense. Counsel, in response, provided a certified letter from the [REDACTED] the prosecuting attorney for the [REDACTED] and [REDACTED] Municipal Court. The letter indicated that on May 31, 2008 the applicant was cited for a first offense of operating motor vehicle under the influence; that the applicant pled no contest to the charge and the forfeiture imposed was \$250 plus cost; and that "due to the costs assessed for this OWI first offense, [the applicant's] total forfeiture due was \$716.00"

The applicant through counsel has provided independent objective evidence to resolve the inconsistency in the record. Therefore, this misdemeanor conviction no longer affects immigration consequences.

The applicant has one misdemeanor conviction (disorderly conduct) and it does not render the applicant 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, and TPS will be reinstated.

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