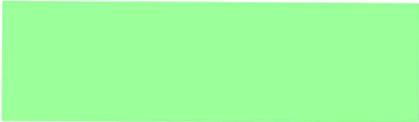




U.S. Citizenship  
and Immigration  
Services

(b)(6)



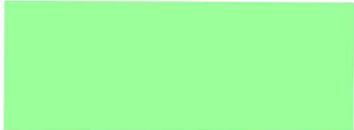
DATE: **SEP 04 2013** Office: VERMONT SERVICE CENTER

FILE:

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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 states that the applicant's two convictions under Maryland Transportation Code should not be considered misdemeanors for TPS purposes because "they do not even carry a possible penalty of one year or six months imprisonment as misdemeanors usually do."

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 record contains the following:

1. Court documentation in Case no. [REDACTED] from the Maryland District Court, which indicates that on July 5, 2011, the applicant pled guilty to fail to return and remain after accident involving property damage, a violation of Maryland Transportation Code § 20-103. The applicant was ordered to pay a fine.
2. Court documentation in Case no. [REDACTED] from the Maryland District Court, which indicates that on July 5, 2011, the applicant pled guilty to drive/attempting to drive while impaired by alcohol, a violation of Maryland Transportation Code § 21-902. The applicant was ordered to pay a fine and court cost.

Counsel cites memorandums issued by U.S. Citizenship and Immigration Services (USCIS) on January 17, 2010<sup>1</sup> and January 21, 2011, to support his argument that the applicant's convictions in Maryland should not disqualify him from maintaining TPS. The memorandum dated January 17, 2010, specifically pertains to traffic infractions and violations committed in the state of New York. The state of Maryland has not classified any of the above offenses to be infractions/violations. The memorandum of January 21, 2011, specifically pertains to certain offenses where the court has issued a "no jail" or "no incarceration" certification. The court documents submitted do not indicate that a "no jail" or "no incarceration certification" had been issued and no certification was presented on appeal.

Maryland Transportation Code § 27-101 provides in pertinent part:

- (a) It is a misdemeanor for any person to violate any of the provisions of the Maryland Vehicle Law unless the violation:
  - (1) Is declared to be a felony by the Maryland Vehicle Law or by any other law of this State; or
  - (2) Is punishable by a civil penalty under the applicable provision of the Maryland Vehicle Law
- (b) Except as otherwise provided in this section, any person convicted of a misdemeanor for the violation of any of the provisions of the Maryland Vehicle Law is subject to a fine of not more than \$500.
- (c) Any person who is convicted of a violation of any of the provisions of the following sections of this article is subject to a fine of not more than \$500 or imprisonment for not more than 2 months or both:
  - (16) § 20-103 ("Driver to remain at scene - Accidents resulting only in damage to attended vehicle or property");
  - (23) Except as provided in subsections (f) and (q) of this section, § 21-902(b) ("Driving while impaired by alcohol");

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

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<sup>1</sup>The memorandum, issued by Associate Director, Service Center Operations, and the Chief, AAO, determined that offenses described as violations and traffic infractions in New York should not be considered disqualifying misdemeanors.

punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court documents reflect that the applicant pled guilty to each offense and the judge ordered some form of penalty to each charge. Therefore, the applicant has been "convicted" of the offenses for immigration purposes. As cited above, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any*. (Emphasis added.)

The AAO has reviewed counsel's brief on appeal and the authorities cited therein, and concludes that the misdemeanor convictions continue to affect immigration consequences. 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. 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.