

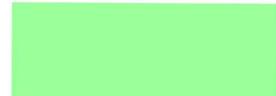


U.S. Citizenship
and Immigration
Services

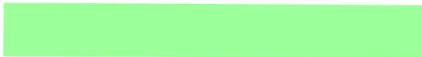
(b)(6)



DATE: **SEP 05 2013** Office: VERMONT SERVICE CENTER

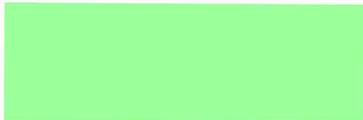


IN RE: Applicant:



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 (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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 the reckless driving conviction was overturned by the Chesterfield County Circuit Court on September 26, 2012.

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.

Section 101(a)(48)(B) of the Act provides, "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

The record reflects that on August 5, 2009, in the Richmond General District Court of Virginia, the applicant pled guilty to obstruction of justice without force, a violation of Virginia Code § 18.2.460, a misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]

The record also reflects that on November 30, 2005, the applicant was arrested for reckless driving. In the Chesterfield County General District Court of Virginia, the applicant was found guilty of reckless driving, a violation of Virginia Code § 46.2-852, a misdemeanor. Case no. [REDACTED]

[REDACTED] On March 8, 2006, the applicant appealed the decision to the Chesterfield County Circuit Court. On May 25, 2006, a hearing was held and the applicant pled no contest to and was found guilty of violating Virginia Code 13-1; § 46.2-852, reckless driving. The applicant was ordered to pay \$100 and court cost. Case no. [REDACTED] On September 26, 2012, in the Chesterfield County Circuit Court, the reckless driving conviction and sentence were vacated. The applicant was found guilty of speeding, an infraction. Case no. [REDACTED]

The applicant has one misdemeanor conviction for violating section Virginia Code § 18.2.460 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 regulation 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.

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.