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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 05 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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (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 the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel provides the requested court documents relating to the applicant's three arrests.

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.

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 applicant indicated on his re-registration application that he had been arrested in Kentucky on: 1) March 31, 2004 for public intoxication; and 2) September 9, 2005 for driving under the influence.

The current Federal Bureau of Investigation report indicates that on July 15, 2007, the applicant was arrested by the State Police in Kentucky for speeding and operating a motor vehicle under the influence of alcohol/drugs/etc.

On June 25, 2012, the applicant was requested to provide certified judgment and court documents from the courts for all arrests. The applicant, however, did not respond. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew TPS on November 15, 2012.

On appeal, counsel submits:

- Court documentation in Case no. from the Circuit Court, which indicates that on March 14, 2004, the applicant was charged with alcohol intoxication in a public place, a violation of KRS 222.202, a misdemeanor. On March 31, 2004, the applicant was found guilty of this offense.

A person guilty of alcohol intoxication, or drinking alcoholic beverages in a public place shall, for a first or second offense, be fined not less than twenty-five dollars ($25). KRS 222.990(3).

- Court documentation in Case no. from the Circuit Court, which indicates that on October 20, 2005, the applicant was charged with disregarding stop sign, no operators/moped license and operate motor vehicle under/influence of alcohol drugs, etc. .08% - 1st offense. On May 10, 2013, the charges were dismissed.

- Court documentation in Case no. from the Circuit Court, which indicates that on July 16, 2007, the applicant was charged with operate motor vehicle under/influence of alcohol drugs, etc. .08% - 1st offense. On or about July 23, 2007, the charge was amended to reckless driving, a violation of KRS 189.290. The applicant pled guilty to the reckless driving charge and was ordered to pay a fine.

Any person who violates any of the provisions of KRS… 189.290… shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.... KRS 189.990(1).

- Court documentation in Case no. from the Circuit Court, which indicates that on March 16, 2008, the applicant was charged with failure of non-owner operator to maintain required insurance. On April 24, 2008, the charge was dismissed.

- Court documentation in Case no. from the Circuit Court, which indicates that on January 28, 2011, the applicant was charged with operating vehicle with expired license, failure to produce insurance card and one headlight. On March 31, 2011, the misdemeanor charge of operating vehicle with expired license was dismissed. The applicant was found guilty of the remaining charges.

- Court documentation in Case no. from the Circuit Court, which indicates that on November 12, 2012, the applicant was charged with failure of owner to maintain required insurance/security - 1st offense, a violation of KRS 304.39.080, a Class B misdemeanor. On January 17, 2013, the applicant was found guilty of this charge and was placed on conditional discharge for two years. The applicant was ordered to pay a fine and was sentenced to serve 60 days in jail which was suspended.

Because a violation of KRS 222.202 in the state of Kentucky is not punishable by imprisonment, but only by civil penalty, the offense is not a misdemeanor as defined in 8 C.F.R. § 244.1. The remaining convictions are considered violations in the state of Kentucky which carry only civil penalties.

The applicant has one misdemeanor conviction for violating section KRS 304.39.080 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.