



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant has been convicted of offenses that carry no jail time under the law of the state of New Jersey and are outside of the purview of being considered a misdemeanor under federal regulations.

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 current Federal Bureau of Investigation report reflects the applicant's criminal history in the state of New Jersey as follows:

1. On May 24, 2009, the applicant was arrested by the West Orange Police Department for contempt.
2. On November 1, 2010, the applicant was arrested by the West Orange Police Department for contempt.

3. On November 3, 2010, the applicant was arrested by the Newark Police Department for bail jumping.

In response to the notice of April 24, 2012, that requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- A copy of a warrant [REDACTED] issued on November 6, 2009, by the Bernards Township Police Department for violating N.J.S.A. 39:4-50, driving while intoxicated.
- Court documentation from the West Orange Municipal Court, which indicates that on April 25, 2011, the applicant was found guilty of violating N.J.S.A. 39:4-50, driving while intoxicated – 1st offense. The applicant was ordered to pay a fine of \$400 and court cost of \$33, serve 48 hours in the Intoxicated Drive Resource Center and his license was suspended. The applicant has provided a payment receipt from the court which indicates that this offense occurred on May 24, 2009. Complaint No. [REDACTED], Docket no. [REDACTED]
- A copy of a warrant [REDACTED] issued on October 1, 2009, by the Bernards Township Police Department for violating N.J.S.A. 39:3-40, driving while license is suspended which occurred on August 16, 2009.
- Court documentation from the Sea Bright Municipal Court, which indicates that on November 18, 2010, the applicant was found guilty of driving while license is suspended, and was sentenced to pay a fine of \$507 and court cost of \$33. The applicant has provided a payment receipt from the court which indicates that this offense occurred on August 16, 2009. Complaint no. [REDACTED] Docket no. [REDACTED]
- Summons/tickets dated November 1, 2010, for driving while license suspended [REDACTED] and expired driver's license [REDACTED] from the Municipal Court of Bernards Township.
- Court documentation from the Bernards Township Municipal Court, which indicates that on November 16, 2010, the applicant was found guilty of driving while license suspended, and was sentenced to pay a fine of \$506 and court cost of \$33. The applicant has provided a payment receipt from the court which indicates that this offense occurred on November 1, 2010. Complaint no. [REDACTED] Docket no. [REDACTED]
- Documentation from the New Jersey Motor Vehicle Violations Surcharge System dated December 3, 2010, advising the applicant of automobile violations

surcharges for his violations that occurred on May 24, 2009, August 16, 2009 and November 1, 2010.

- Documentation dated May 24, 2011, from the New Jersey Automated Traffic System Payment Information for ticket numbers [REDACTED] (for violating N.J.S.A. 39:4-130 on September 6, 2008), [REDACTED], and [REDACTED] (for violating N.J.S.A. 39:4-97.2 on December 6, 2008).

The punishment upon conviction for a first offense of violating N.J.S.A. 39:3-40 is a fine of \$500. Upon conviction for a second offense, a fine of \$750.00, imprisonment in the county jail for at least one but not more than five days and, if the second offense involves the operation of a motor vehicle during a period when the violator's driver's license is suspended and that second offense occurs within five years of a conviction for that same offense, revocation of the violator's motor vehicle registration privilege. *See* N.J.S.A. 39:3-40(a) and (b).

The offense of driving while license is suspended in Docket nos. [REDACTED] and [REDACTED] are not misdemeanors, for immigration purposes, as: (1) the first offense is not punishable by imprisonment; (2) the second offense is punishable by a maximum of five days; and (3) there is no indication that either offense was due to a conviction of driving while intoxicated (N.J.S.A. 39:4-50), refusal to submit a chemical test (N.J.S.A. 39:4-50.4a) or habitual offender (N.J.S.A. 39:5-30(a)), which is punishable by incarceration of not less than 10 days but no more than 90 days.

Counsel's assertion that the conviction of driving while intoxicated is not a misdemeanor is not persuasive. The penalty for driving while intoxicated, N.J.S.A. 39:4-50, can carry a possible sentence of imprisonment for up to thirty days. *See* N.J.S.A. 39:4-50(a)(1)(i).

As cited above, for immigration purposes, 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.) Because the applicant was convicted of an offense for which he could have received a jail sentences for up to thirty days, he has, for immigration purposes, been convicted of a misdemeanor (N.J.S.A. 39:4-50). 8 C.F.R. § 244.1.

The applicant has one misdemeanor conviction for violating section N.J.S.A. 39:4-50 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.