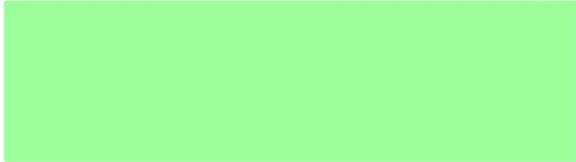




U.S. Citizenship  
and Immigration  
Services

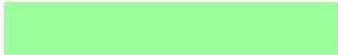
(b)(6)



DATE: **SEP 06 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: Self-represented

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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's misdemeanor conviction of annoying or molesting a child under 18 constitutes sexual abuse of a minor and therefore an aggravated felony under section 101(a)(43)(A) of the Act.

On appeal, the applicant asserts that he has not been convicted of a felony.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.”

A conviction for “murder, rape, or sexual abuse of a minor” constitutes an aggravated felony under section 101(a)(43)(A) of the Act.

The record contains court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court of California, which indicates that on May 16, 1998, the applicant was charged with five misdemeanor counts of violating section 647.6(a)(1) PC, annoying/molesting a child under 18, and five misdemeanor counts of violating section 243.4(e)(1) PC, sexual battery touch for sex arousal. On July 3, 2008, the applicant pled guilty to one count of annoying/molesting a child under 18. Imposition of sentence was suspended and the applicant was placed on summary probation for 36 months, ordered to pay a fine and perform 45 days of Cal Trans. As a condition of his probation the applicant was also ordered to register as a sex offender pursuant to section 290 PC. The remaining charges were dismissed.

In *Nicanor-Romero v. Mukasey*, 523 F.3d 992 (9th Cir. 2008),<sup>1</sup> the Ninth Circuit Court of Appeals reaffirmed the conclusion of *United States v. Pallares-Galan*, 359 F.3d 1088, 1102-03 (9th Cir. 2004)<sup>2</sup> holding that a conviction under California law for “annoying or molesting a child under age 18” is not categorically an aggravated felony as defined in section 101(a)(43)(A) of the Act.

The applicant has, therefore, one misdemeanor conviction 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). Consequently, the director's decision to withdraw TPS will, itself, be withdrawn, and the appeal will be sustained.

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

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<sup>1</sup> *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009).

<sup>2</sup> The Ninth Circuit reasoned that sexual abuse “requires more than improper motivation; it requires conduct that is abusive.” *Id.* at 1101–02. In contrast, conduct proscribed under section 647.6(a) PC, “regardless of a defendant's lewd intent,” may “involve neither harm or injury to a minor, nor the touching of or by a minor,” and therefore “does not constitute ‘sexual abuse of a minor’....” *Id.* at 1102.