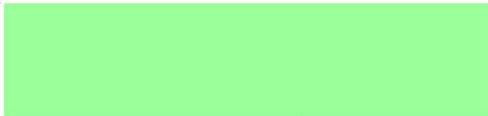




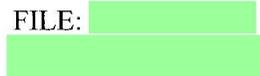
U.S. Citizenship
and Immigration
Services

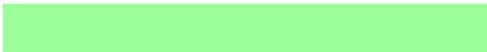
(b)(6)



DATE: SEP 16 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: 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. 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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 claims to be a native and citizen of El Salvador who is seeking 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, the applicant asserts that his October 29, 2011 arrest did not result in a misdemeanor offense because "I only spent 12 hours in jail." The applicant submits a copy of an Inmate Commitment Summary Report relating to his arrest on October 29, 2011 at 10:03 p.m. which indicates that the applicant was arrested for a misdemeanor offense of public intoxication/drinking in public and that he was released on October 30, 2011 at 9:38 a.m.

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).

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).

"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 current Federal Bureau of Investigation report reflects the following offenses in the state of Arkansas:

1. On December 24, 2006 the applicant was arrested by the De Queen Police Department for driving while intoxicated.
2. On October 29, 2011, the applicant was arrested by the De Queen Police Department for public intoxication.

The record contains court document from the District Court of Sevier County, Arkansas, which indicates that on September 26, 2006, the applicant was charged with driving while intoxicated, a violation of Arkansas Code Ann. § 5-65-103. On October 19, 2006, the applicant pled guilty to this misdemeanor offense and was ordered to pay a \$1310 fine. Case no. [REDACTED].

Arkansas law provides that any person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103, for a first offense, may be imprisoned for no less than twenty-four (24) hours and no more than one (1) year. Arkansas Code Ann § 5-65-111(a)(1)(A).

The applicant's assertion on appeal is without merit. The court document from the District Court of Sevier County, Arkansas clearly indicates that on October 31, 2011, the applicant was charged with public intoxication, a violation of Arkansas Code Ann § 5-71-212. On November 16, 2011, the applicant pled guilty to this Class C misdemeanor offense and was ordered to pay a \$500 fine. Case no. [REDACTED].

Arkansas law provides that any person convicted of a Class C misdemeanor may be sentenced up to thirty (30) days and may pay a fine not exceeding \$500. Arkansas Code Ann §§ 5-4-401(b)(3) and 5-4-201(b)(3). 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.) Therefore, the applicant's conviction of public intoxication qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.