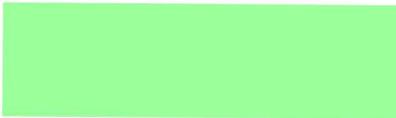




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 16 2013**

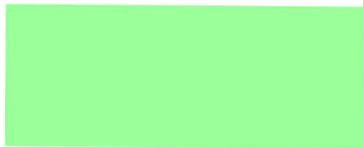
Office: VERMONT SERVICE CENTER

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:



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,

for Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 states that the 2011 arrest for driving under the influence is not a misdemeanor because "based upon the plea agreement certification pursuant to Colorado Rule of Criminal Procedure 11(f), which guaranteed that [the applicant] would not receive jail pursuant to the plea." Counsel provides a memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support her argument that the applicant's conviction in Colorado should not disqualify him from maintaining TPS.

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 burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The current Federal Bureau of Investigation report reflects the following offenses in the state of Colorado:

1. On November 11, 2007, the applicant was arrested by the Aurora Police Department for harassment/follow in public.
2. On June 6, 2011, the applicant was arrested by the State Police in Castle Rock for driving under the influence of liquor.

On April 18, 2012, a notice was issued requesting the applicant to submit certified judgment and conviction documents from the court(s) for all arrests. In response, an extension of time was requested and a copy of a memorandum issued by USCIS on January 21, 2011 relating to certain offenses where the court has issued a “no jail” or “no incarceration” certification was submitted.¹

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant’s TPS on August 6, 2012.

On appeal, counsel provides court documentation relating to the applicant’s 2011 arrest, which indicates that the applicant pled guilty to driving while ability impaired. The applicant received a “no jail” sentence.

The court documentation, however, was not certified by the court and therefore will not be considered. The director, in his notice, specifically advised the applicant to submit certified judgment and conviction documents. Furthermore, the applicant has failed to provide the final court disposition of his arrest on November 11, 2007. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(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.

¹ The response was submitted by an individual claiming to represent the applicant. However, the required Form G-28, Notice of Entry of Appearance as Attorney or Representative, was not submitted.