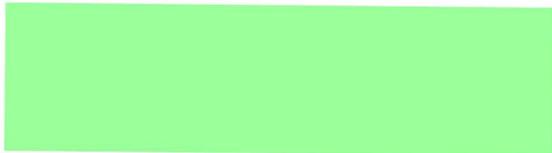




U.S. Citizenship
and Immigration
Services

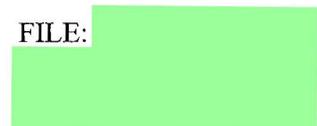
(b)(6)



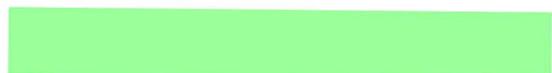
DATE: **APR 04 2014**

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted, and the previous decision of the AAO will be affirmed.

The applicant is 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.

On January 13, 2011, the director withdrew TPS because he determined that the applicant had been convicted of two misdemeanors committed in the United States. The AAO, in dismissing the appeal on March 6, 2012, concurred with the director's findings.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

On motion, counsel asserts that the AAO erroneously dismissed the applicant's appeal as the applicant's sentences for the two crimes did not carry an aggregate sentence of five or more years.

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.

As discussed in the AAO's March 6, 2012 decision, the record contains the following court documentation which the applicant had previously provided:

- Court documentation in Case no. [REDACTED] from [REDACTED] Clerk of Court, which reflects that on May 30, 2007, the applicant pled no contest to no driver's

license and reasonable and proper control of vehicle. The applicant was ordered to pay a fine.

- Court documentation in Case no. [REDACTED] from the [REDACTED] Parish, Louisiana, which indicates that on December 8, 2009, the applicant pled guilty to violating section 14:98, driving while intoxicated/BAC .199%, and section 14:100, hit and run. For violating LRS 14.98, the applicant was ordered to pay a fine, perform community service, sentenced to 60 days in jail, which was suspended, and was placed on probation for 18 months. For violating LRS 14.100, the applicant was ordered to pay a fine. The remaining offense was dismissed.

As cited above, 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.

The penalty upon a first conviction of violating LRS 14.98 is by imprisonment for a period of not less than 10 days and not more than 6 months or by a fine of not less than \$300 and not more than \$1000. LRS 14.98(B)(1).

The penalty for violating LRS 14.100 is by imprisonment for a period of not less than 10 days and not more than 6 months or by a fine of not more than \$300, or by both such fine and imprisonment. LRS 14.100(b)

The court documents submitted reflect that the applicant was found guilty of each offense, and the judge ordered some form of punishment to the charges above. Therefore, for immigration purposes, the applicant has been convicted of two misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

On January 13, 2011, pursuant to 8.C.F.R. § 244.14(a)(1), the director withdrew the applicant's TPS because of his two misdemeanor convictions in Case no. F1798045.

On appeal, counsel asserted the applicant had not been convicted of two misdemeanors. As discussed in the AAO's March 6, 2012 decision, the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's *removability* under section 237 of the Act; this determination has no bearing on the applicant's *eligibility* for TPS. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court dispositions, the applicant was charged with two separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. The applicant has been convicted of two separate and distinct misdemeanor offenses and is not eligible for TPS.

On motion, counsel contends that the applicant's sentences must carry an aggregate term of five years or more to be ineligible for TPS, however, as cited above, the TPS regulations state that 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 "as defined in § 244.1. committed in the United States." See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The applicant has been convicted of two misdemeanors in the United States and is, therefore, not eligible for TPS.

The burden of proof in these proceedings rests solely with the applicant. Here, the applicant has not sustained that burden. The previous decisions of the director and the AAO will not be disturbed.

ORDER: The previous decision of the AAO dated March 6, 2012, is affirmed, and the applicant's TPS remains withdrawn.