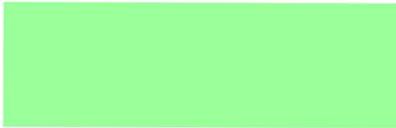


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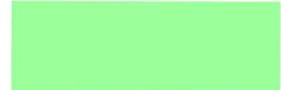


U.S. Citizenship  
and Immigration  
Services



DATE: DEC 01 2014

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The case will be remanded for further consideration and action.

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. On February 11, 2014, the director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submitted an additional court document relating to his driving while intoxicated violation. The applicant indicates that he had previously submitted the requested court documents.

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 AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The Federal Bureau of Investigation report indicates that on April [REDACTED] the applicant was arrested by the New York Police Department for driving while intoxicated – school bus with student, a Class E, Felony; aggravated unlicensed operation of a vehicle in the third degree, a Class U misdemeanor, and permit unlicensed operator.

On September 11, 2013, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests including his arrest on April [REDACTED]. The applicant was granted 33 days in which to submit the requested court disposition(s). In denying the application, the director noted that, as of the date of the decision, no response had been received.

On appeal, the applicant submitted court documentation from the Criminal Court of the City of New York dated October 28, 2014, which indicated that he had been convicted in Case no. [REDACTED] of violating VTL 1192.2, driving while intoxicated (DWI) – blood alcohol content 08% or more. The applicant was placed on probation for one year and was ordered to pay a fine and court costs.

On October 1, 2014, we sent a notice to the applicant advising him that the court documentation submitted on appeal was insufficient to overcome the director's decision to withdraw TPS. Specifically, it was not possible to determine if the court documentation submitted on appeal related to the arrest of April [REDACTED] as: 1) the date of arrest was not indicated on the court documentation; 2) the court documentation did not identify whether the DWI offense resulted in a felony or misdemeanor conviction; and 3) the final outcome of the remaining offenses was not known.

The applicant was afforded 30 days to submit either a certified letter from the District Attorney's Office or certified complete court documentation detailing the final dispositions of each violation that occurred on April [REDACTED]. The applicant was advised that the court document must include the classification for each conviction. The applicant, however, has failed to respond to our notice.

A further review of the record, however, reflects that a response to the director's notice of September 11, 2013 was received at the Vermont Service Center on September 26, 2013. The applicant's response will be considered on appeal. The applicant submitted:

- Court documents from the Queen County Criminal Court signed by the judge and the applicant on October 27, 2011 indicating that the applicant had been convicted in Case no. [REDACTED] of violating VTL 1192.2, driving while intoxicated (DWI) – blood alcohol content 08% or more. The applicant was placed on conditional discharge for one year and was ordered to pay a fine and court costs and attend drinking driver and Hispanic counseling center programs.
- An Order of Suspension or Revocation from the New York Department of Motor Vehicles, indicating that the applicant's driver's license had been revoked for six months relating to his arrest on April [REDACTED] and his subsequent DWI conviction on October [REDACTED] in Case no. [REDACTED].

Although the applicant did not respond to our request, it is determined that sufficient court documents had been provided in response to the notice of September 11, 2013. The evidence of

record reflects that the applicant has one misdemeanor conviction for DWI, 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 regulations in 8 C.F.R. § 244.4(a). Therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the withdrawal of TPS pursuant to 8 C.F.R. § 103.3(a)(1)(i).

**ORDER:** The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.