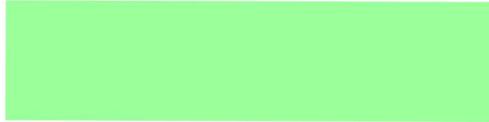


(b)(6)

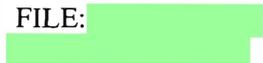
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

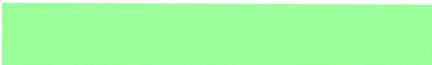


U.S. Citizenship
and Immigration
Services



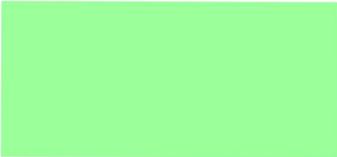
DATE: **DEC 05 2014** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 February 13, 2014, the director denied the application because it was determined that the applicant had failed to submit requested court documentation relating to his two arrests.

On appeal, counsel indicated that no charging documents exist for either arrest and that the applicant was only detained by the police.

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.

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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 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 reflects the applicant’s criminal history in the states of California and Texas as follows:

1. On [REDACTED] the applicant was arrested by the [REDACTED] Police Department for felony spousal beating.
2. On [REDACTED] the applicant was arrested by the [REDACTED] Police Department for one count of battery upon spouse.
3. On [REDACTED] the applicant was arrested by the [REDACTED] Police Department for theft >\$50<\$500.

The record contains court documentation indicating that on June 18, 2004, the applicant was convicted of the misdemeanor theft violation.

The applicant filed his initial TPS application [REDACTED] on May 30, 2001. On June 22, 2004, a Notice of Intent to Deny was issued advising the applicant to submit certified dispositions for the arrests occurring on April 25, 1992 and October 22, 1999. The Director, Texas Service Center, denied that application on August 4, 2004, as the applicant failed to submit the requested court dispositions.

The applicant filed a TPS application [REDACTED], on March 7, 2005 and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. On September 16, 2005, the Director, California Service Center, denied that re-registration application because the applicant’s initial TPS application had been denied and therefore he was not eligible to apply for re-registration for TPS. On July 31, 2006, a Notice to Appear, Form I-862, was issued. The applicant filed a TPS application on September 1, 2006 ([REDACTED]), which was denied the Director, Vermont Service Center, on February 24, 2007.

The applicant filed a TPS application ([REDACTED]) on February 1, 2007. During removal proceedings the applicant presented copies of the police reports relating to his 1992 and 1999 arrests for spousal abuse and domestic battery, respectively. The applicant also submitted several copies of letters from the [REDACTED] Superior Court of California indicating that no record was found under his name. In his oral decision issued on September 19, 2007, the immigration judge (IJ) denied the TPS application. The IJ concluded that the applicant had not demonstrated eligibility for TPS as record searches indicating that records have not been found

were not sufficient evidence of the dispositions of his arrests (IJ at 3). The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On July 18, 2008, the BIA affirmed, in part, the IJ's finding that the applicant did present sufficient evidence pertaining to the dispositions of his two arrests in California.

The applicant filed TPS applications on October 21, 2007 [REDACTED] and March 12, 2012 ([REDACTED]), which were denied or administratively closed because the applicant's initial TPS application had been denied.

The applicant filed the current TPS application on July 29, 2013. The director, in denying the application, determined that the applicant had not provided any new evidence relating to the final outcome of his two arrests in 1992 and 1999 in the state of California. The director concluded that absent the final dispositions of these arrests, a determination could not be made whether the applicant was admissible to the United States and eligible for TPS.

On September 18, 2014, we sent a notice to the applicant advising him that we agreed with the decisions of the IJ and BIA in that the documents from the [REDACTED] Superior Court, indicating no record was found were not sufficient in establishing the final dispositions of his 1992 and 1999 arrests. The applicant also was informed of the following:

- The previously submitted police reports did not corroborative counsel's assertion that no charging documents existed or that the applicant had only been detained by the police.
- Although the applicant was informed by the IJ in the Oral Decision issued September 19, 2007 that the documents from the [REDACTED] Court indicating no record was found were not sufficient in establishing the final dispositions of his arrests, he continued to submit the same documentation from the court.
- U.S. Citizenship and Immigration Services (USCIS) database reflected that three days after the applicant's 1992 arrest, a pre-filing deferral was initiated. The record contained no objective evidence to dispute this finding.
- Documentation from the court indicating that "no record was found" does not support a finding that the offenses were dismissed or were in error.
- The applicant has the burden to establish, with affirmative evidence, the final disposition of each arrest.

The applicant was provided forty (40) days to submit a certified letter from the District Attorney's Office or from the [REDACTED] Police Department outlining the final dispositions of his arrests for spousal abuse in 1992 and for domestic battery in 1999. The notice, which was also sent to counsel, advised the applicant not to re-submit any documents that have been previously provided as they were of little probative value.

The notice to the applicant was returned by the U.S. Postal Service as undeliverable. It is noted that our notice was sent to the applicant's address listed on the Form G-28, Notice of Appearance as Attorney or Accredited Representative, accompanying the Form I-290B, Notice of Appeal or Motion.¹ The record contains no evidence that the notice addressed to counsel has been returned as undeliverable.

We conclude that the applicant has failed to provide sufficient evidence revealing the final court disposition of his arrests on April 25, 1992 and October 22, 1999. 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 deny the application for this reason 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.

Finally, it is noted for the record that in addition to denying the TPS application, the IJ on September 19, 2007 also ordered the applicant removed from the United States. The BIA, in its decision of July 18, 2008, affirmed the IJ's decision ordering the applicant to be removed from the United States.

ORDER: The appeal is dismissed.

¹ The Form I-290B was filed on March 17, 2014.