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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 08 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:

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 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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. On August 28, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

In accordance with the U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, Notice of Appeal or Motion, a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, must be filed with an appeal filed with the AAO. This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (February 2, 2010). As of February 28, 2013, U.S. Citizenship and Immigration Services has issued a new Form G-28. Previous versions will not be accepted after May 26, 2013.

The Form I-290B is signed by [REDACTED] who claims to be representing the applicant on appeal. The Form G-28 was filed on December 30, 2013; however, it was incomplete as Part 3.5.a.-7 was not filled out. Pursuant to 8 C.F.R. § 292.4(a), the AAO sought to clarify whether [REDACTED] was authorized to represent the applicant in this proceeding. On October 8, 2014, 2012, a facsimile was sent to counsel's office requesting that a new properly executed Form G-28 be sent to this office by mail or fax within fifteen (15) calendar days. To date, the requested Form G-28 has not been submitted. As a properly completed Form G-28 has not been submitted, the decision will be furnished to the applicant and to counsel on record.

On appeal, the applicant asserted he has one misdemeanor conviction as his February 8, 2013 conviction was dismissed upon completion of community service. The applicant indicated at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than a year later, no further correspondence has been presented. Therefore, the record must be considered complete.

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B, Notice of Appeal or Motion, instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

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.

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 record contains certified court documentation from the Iowa District Court for [REDACTED] County as follows:

- On February 8, 2013, the applicant pled guilty to and was adjudged guilty of operating a motor vehicle while intoxicated – first offense, a violation of Iowa Code § 321J.2. The applicant was sentenced to serve one year in jail (360 days suspended), ordered to pay a fine and court costs, perform 80 hours of community service and placed on probation for one year. Docket no. [REDACTED].
- On October 15, 2009, the applicant pled guilty to and was adjudged guilty of operating a motor vehicle while intoxicated (OWI) – first offense, a violation of Iowa Code § 321J.2. The applicant was sentenced to serve one year in jail (362 days suspended), ordered to pay a fine and court costs, enroll and complete an OWI first offense program and was placed on probation for one year. Docket no. [REDACTED].

Counsel's statement on appeal is noted. However, neither the acknowledgement of past mistakes nor mere compliance with the court's orders alleviates the applicant of any convictions that had occurred nor dismisses or expunges any convictions.

Under the statutory definition of "conviction" at section 101(a)(48)(A) of the Act, no effect is to be given in immigration proceedings to a state action which purports to reduce, expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528.

Without certified documentation from the court indicating that the February 8, 2013 conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor conviction continues to effect immigration consequences.

The applicant is ineligible for TPS due to his two 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.