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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: FEB 10 2014

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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. 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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.

The director withdrew TPS because the applicant had been convicted of a felony and a misdemeanor in the United States.

On appeal, the applicant asserts that deferred adjudication is not a conviction that should trigger an automatic bar to TPS status, and that her probation will not be completed until March 11, 2015. The applicant states that she will face financial hardship if TPS is withdrawn.

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).

"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 record reflects the following:

1. On [REDACTED] 2012, the applicant was arrested by the Sheriff's Office in Houston, Texas for abandon/endanger child w/intent to return, a violation of Texas Penal Code § 22.041(b), a felony. The court authorized the state to prosecute the case as a misdemeanor pursuant to Texas Penal Code § 12.44(b). On March 12, 2013, the applicant pled guilty to the offense. Adjudication of guilt was deferred and the applicant was placed on community supervision for two years and ordered to pay court costs. Case no. [REDACTED]

2. On [REDACTED] the applicant was arrested by the Houston Police Department for theft, a violation of Texas Penal Code § 31.03, a Class A misdemeanor.<sup>1</sup> On [REDACTED] 2005, the applicant pled guilty to the offense and was sentenced to serve four days in jail with credit for time served. Case no. [REDACTED]

On April 11, 2013, the director issued a notice which advised the applicant of the above convictions. The applicant was granted the opportunity to submit recent court documents to establish that the convictions did not make her ineligible for the benefit sought. The applicant, however, did not respond to the notice. Accordingly, on June 28, 2013, the director withdrew TPS due to the above convictions.

On appeal, the applicant asserts that deferred adjudication is not a conviction that should trigger an automatic bar to TPS status.

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 record, in this case, indicates that the applicant entered a guilty plea to the offense, and the judge accepted the plea and ordered some form of penalty and a restraint on the applicant's liberty. Therefore, for immigration purposes, the applicant has been convicted of the felony offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to her felony conviction. 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.

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<sup>1</sup> Texas law (§ 12.21) describes the punishment for a Class A Misdemeanor as confinement in jail for a term not to exceed one year and/or a fine not to exceed \$4,000.