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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

[Redacted]

DATE: **FEB 25 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:

[Redacted]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 April 9, 2013, the director withdrew the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel provides court documents indicating that the theft charge was reduced to a county ordinance. Counsel states that the [REDACTED] judgments will be provided once they are received. Counsel indicates 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 nine months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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.

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 instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

The Federal Bureau of Investigation report dated January 10, 2012, indicates the applicant's criminal record in the states of Louisiana and Texas as follows:

1. On [REDACTED], 2005, the applicant was arrested by the [REDACTED] Police Department for aggravated assault causes serious bodily injury.
2. On [REDACTED] 2011, the applicant was arrested by the Sheriff's Office of [REDACTED] Louisiana for theft of goods and fugitive out of [REDACTED]

On May 21, 2012, a notice was issued requesting the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant was granted until June 23, 2012 to submit the requested documents. The applicant, however, failed to respond to the notice. Accordingly, on April 9, 2013, the director withdrew TPS.

On appeal, counsel submits court documentation in Case no. [REDACTED] from the [REDACTED] [REDACTED] which indicates that on June [REDACTED] 2012, the applicant was found guilty of contempt of court and ordered to pay a fine. A charge of loud noise was amended from the theft of goods charge. On December [REDACTED] 2012, the applicant pled guilty to loud noise, a municipal ordinance and was ordered to pay a fine.

Louisiana law provides a court may punish a person adjudged guilty of contempt of court in connection with a criminal proceeding by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both. LA Code Crim. Pro. 25. Therefore, it is concluded that the applicant's conviction of contempt of court qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

As cited above, for immigration purposes, a misdemeanor is a crime "*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Louisiana law, not the specific prison term meted out by the judge in a particular case.

In the instant case, the court documentation reflects that the applicant pled guilty to contempt of court and the judge ordered some form of penalty to the charge. Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

Finally, the applicant has failed to provide credible evidence revealing the final court disposition of his arrest on November 6, 2005. 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 withdraw TPS will be affirmed.

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NON-PRECEDENT DECISION

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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.