

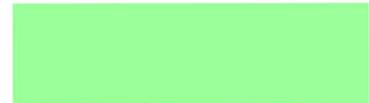


U.S. Citizenship
and Immigration
Services

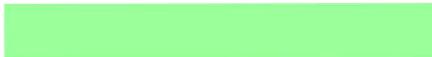
(b)(6)



DATE: **JAN 17 2014** Office: VERMONT SERVICE CENTER

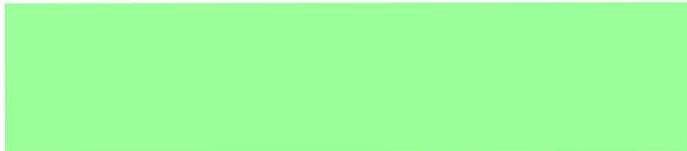


IN RE: Applicant:



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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 two misdemeanors in the United States.

On appeal, citing U.S. Citizenship and Immigration Services memorandum of January 17, 2010, counsel asserts that the applicant's convictions of driving without a license are not disqualifying. Counsel states that the Department of Homeland Security (DHS) has made it clear that driving without a license is a "minor traffic offense" which should not be considered a misdemeanor for immigration purposes. As evidence, counsel provides a Q&A printout from the website of the DHS relating to eligibility for Deferred Action for Childhood Arrivals (DACA).

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:

1. Court documentation from the [REDACTED] [REDACTED] which indicates that on November 17, 2010, the applicant was found guilty in absentia of violating Virginia Code § 46.2-300, no driver's license, a Class 2 misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]
2. Court documentation from the [REDACTED] [REDACTED], which indicates that on April 5, 2012, the applicant was found guilty in absentia of violating Virginia Code § 46.2-300, no driver's license, a Class 2 misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]

Counsel's assertions on appeal are without merit as the memorandum of January 17, 2010 specifically pertains to traffic infractions and violations committed in the state of New York. The state of Virginia has not classified the above offense to be a minor violation or an infraction. *See* Virginia Code § 46.2-300.

The maximum penalty for a Class 2 misdemeanor is confinement in jail for not more than six months and a fine of not more than \$1,000, either or both. *See* Virginia Code § 18.2-11. As cited above, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.*

The court documents reflect that the applicant was found guilty of each offense and the judge ordered some form of penalty to each charge. Therefore, the applicant has been convicted of these misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

Finally, as the applicant is not applying for benefits under DACA, the issue of whether the above offense is considered a significant or non-significant misdemeanor is not relevant in this proceeding.

The AAO has reviewed counsel's brief on appeal and the authorities cited therein, and concludes that the misdemeanor convictions continue to affect immigration consequences. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.