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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

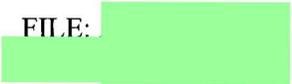


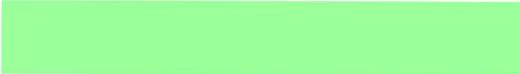
U.S. Citizenship
and Immigration
Services



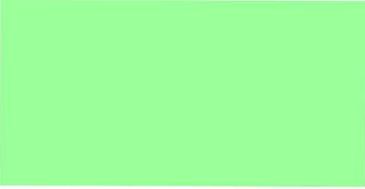
DATE: JAN 31 2014

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

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).

On March 8, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that a motion to vacate the applicant's guilty plea of July 9, 2012 has been filed with the [REDACTED] Municipal Court. Counsel asserts, in pertinent part:

While the transcript reflects that the court engaged in the requisite colloquy to determine whether Defendant's guilty plea was being offered knowingly, intelligently, and voluntarily, and that the Court also informed the Defendant that "convictions *could* lead to your deportation..." (emphasis added), Defendant was unaware, nor was he advised by prior counsel, that his guilty plea would *automatically* result in a withdrawal of his Temporary Protected Status by U.S. Citizenship and Immigration Services.

Citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S. 2010), counsel requests that the AAO grant the appeal "on the basis of the clear constitutional insufficiency of the applicant's July 9, 2012 guilty plea." Counsel also requests that the appeal be held in abeyance until a final ruling against the applicant's motion has been issued. Counsel submits a copy of the applicant's motion for post-conviction relief filed before the municipal court in [REDACTED] on May 3, 2013.

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.

The record reflects that on August 18, 2011, the applicant pled guilty to operating vehicle while impaired, a misdemeanor of the first degree. The applicant was sentenced to serve six days in jail and ordered to pay a fine and court cost. Case no. [REDACTED]

The record also reflects that on July 9, 2012, the applicant pled guilty to operating vehicle while impaired, a misdemeanor of the first degree. The applicant was sentenced to serve 180 days in jail and ordered to pay a fine and court cost. Case no. [REDACTED]

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel's brief on appeal has been noted. However, without certified documentation from the court indicating that the conviction of July 9, 2012 has been vacated for underlying procedural or constitutional defect having to do with the merits of the case, it will continue to effect immigration consequences. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). Furthermore, the AAO will not hold a proceeding in abeyance while an individual attempts to seek post-conviction relief. Accordingly, 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.