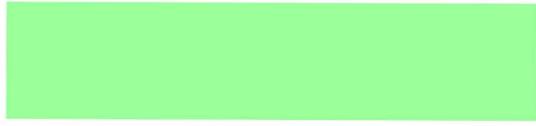


(b)(6)



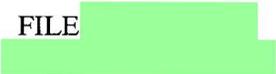
U.S. Citizenship
and Immigration
Services



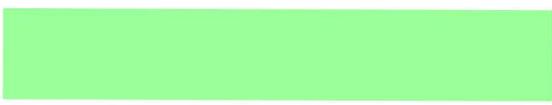
DATE: JUL 11 2014

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. § 1254a

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the denial of his re-registration application.¹ The matter is now before the Administrative Appeals Office (AAO). The case will be remanded for further action.

The applicant claims to be a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director denied the re-registration application because it was determined that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that the director's decision is in error as he submitted additional evidence that was received on December 9, 2013. The applicant submits additional documents from the California Department of Justice. The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.² However, more than 90 days later no further correspondence has been presented by the applicant. Therefore, the record must be considered complete.

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

¹ The applicant listed the receipt number of the current Form I-821 on the appeal form.

² 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.

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 Federal Bureau of Investigation report reflects the applicant’s criminal history in the state of California as follows:

1. On July 20, 2009, the applicant was arrested under the alias [REDACTED] by the Sheriff’s Office of Norwalk for one count of driving without a license.
2. On March 27, 2012, the applicant was arrested by the Los Angeles Police Department for two counts of driving while license is suspended/etc.

On October 31, 2013, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests. The applicant was advised that if judgment and conviction documents were not available, he must submit a certified statement from the appropriate court(s) indicating why said documents were not available. In response, the applicant submitted:

- A printout of the applicant’s criminal history from the California Department of Justice (DOJ), which includes the above arrests. The printout also reflects that on March 28, 2012, the applicant was convicted of driving without a license, a violation of section 12500(a) VC, a misdemeanor. Imposition of sentence was suspended and the applicant was placed on probation for 24 months and was ordered to serve 30 days in jail and pay restitution. The remaining counts, (driving while license is suspended/etc., and fail to stop at vehicle line/crosswalk) were dismissed. Case no [REDACTED]
- A document on California DOJ letterhead titled Claim of Alleged Inaccuracy or Incompleteness signed by the applicant on November 29, 2013. The applicant disputed the arrest of July 20, 2009 and indicated that the case was dismissed.

The director determined that the applicant had failed to adequately respond to the notice and denied the re-registration application on February 13, 2014.

On appeal, the applicant submits a letter dated February 6, 2014, from the California DOJ, indicating that the Bureau of Criminal Information and Analysis has exhausted all options which included contacting the Los Angeles Sheriff’s Department, the Los Angeles County District Attorney, and the Los Angeles County Superior Court and no disposition information was available regarding an arrest on July 20, 2009. The California DOJ updated its record to reflect “no disposition available” for the July 20, 2009 arrest.

The applicant has submitted sufficient evidence from the California DOJ to establish no disposition exists for his arrest on July 20, 2009. The applicant has only one misdemeanor

conviction for violating section 12500(a) VC, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). The applicant has overcome the sole basis for denial of the re-registration application and the withdrawal of TPS. Therefore, the director's decision to deny the re-registration application and to withdraw the applicant's TPS will, itself, be withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.