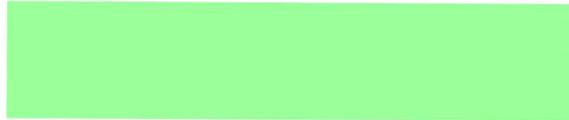


(b)(6)

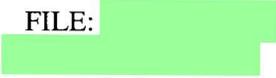


U.S. Citizenship  
and Immigration  
Services



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. § 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.

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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

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 February 28, 2014, the director denied the re-registration application because it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel argues that the director's decision is in error as the applicant did not present himself before a judge and receive a formal adjudication of guilt and that it "is not clear that any punishment, penalty or restraint on [the applicant's] liberty was imposed." Counsel states that it appears that the applicant simply agreed to forfeit his bond in lieu of further dealings with the respective courts.

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

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

1. On November 21, 2010, the applicant was arrested by the [REDACTED] Police Department for driving without a valid license, a violation of O.C.G.A. § 40-5-20(a), a misdemeanor.
2. On August 15, 2012, the applicant was arrested by the [REDACTED] County Sheriff's Office for driving without a valid license, a violation of O.C.G.A. § 40-5-20(a), a misdemeanor.

In response to a request issued on December 18, 2013, for certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- Certified court documentation in Case no. [REDACTED] from the [REDACTED] Municipal Court, indicating that on November 22, 2010 the applicant paid a cash bond of \$713. On February 2, 2011, the cash bond (\$713) was forfeited.
- A certified uniform traffic citation, summons and accusation [REDACTED], and court documentation in Case no. [REDACTED] which indicates that on September 13, 2012, the applicant pled guilty to driving without a valid license. The bond was forfeited and the applicant was adjudged a fine of \$700. It is noted that it appears that the applicant may also have been placed on probation as the comments section indicates "[REDACTED] issued 09/07/12 need to sign up for probation case in 2012 bench warrant box [REDACTED] recalled 09/13/12-pb."

Counsel cites Georgia law, O.C.G.A. 17-6-8, which provides that if any person arrested for a misdemeanor arising out of a violation of the laws of this state relating to (1) traffic or the operation or licensing of motor vehicles or operators; . . . gives a cash bond for his appearance as provided in Code Section 17-6-5 and fails to appear on the date, time, and place specified in the citation or summons without legal excuse, the court may order said cash bond forfeited without the necessity of complying with the statutory procedure provided for in the forfeiture of statutory bail bonds. A judgment ordering the case disposed of and settled may be entered by the court and the proceeds shall be applied in the same manner as fines. If the court does not enter a judgment ordering the case disposed of and settled, the forfeiture of the cash bond shall not be a bar to subsequent prosecution of the person charged with the violation of such laws.

Under Georgia law, O.C.G.A. § 40-13-58, bond forfeiture for traffic offenses occurs when a defendant does not appear at the scheduled court date and that failure of the defendant to appear can be construed as an admission of guilt and the cash bond may be forfeited without the necessity for the statutory procedure provided for the forfeiture of statutory bail bonds and the judge can then enter a judgment of guilty against the defendant without taking further action in the case procedurally.

In the instant case, the court document in Case no. [REDACTED] does not indicate that the judge entered a judgment of guilty against the applicant. There is also no evidence that the applicant

entered a plea. Therefore, it is concluded that the applicant does not have a misdemeanor conviction in Case no [REDACTED] within the meaning of section 101(a)(48)(A) of the Act.

As the applicant pled guilty on September 13, 2012 to violating O.C.G.A. § 40-5-20(a) and the judge ordered some form of penalty and/or restraint on the applicant's liberty, the applicant has been convicted of this misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

The evidence of record reflects that the applicant has one misdemeanor conviction (September 13, 2012) 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 regulations in 8 C.F.R. § 244.4(a). 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.