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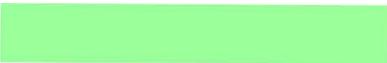
U.S. Citizenship
and Immigration
Services



DATE: JUL 14 2014

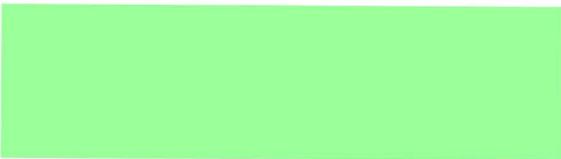
Office: VERMONT SERVICE CENTER

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 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 February 20, 2014, the director denied the re-registration application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel acknowledges the applicant's Class B misdemeanor convictions, but asserts that the minor sentences and fine received are, in reality, petty offenses, which do not involve crimes of moral turpitude; that the minor convictions occurred almost ten years ago; that the applicant was jailed for less than five days for his driving with an invalid license conviction; and that the applicant is eligible to be grandfathered under section 245(i) of the Act.

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 AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

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

In response to the notice issued on January 10, 2014, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted court documents including a Certificate of Disposition from the [REDACTED] District Clerk of Texas, which indicate:

1. On July 20, 2004, the applicant pled guilty to driving while license suspended, a violation of Texas Transportation Code § 521.457, a Class B misdemeanor. The applicant was ordered to serve three days in jail and pay a fine. Case no. [REDACTED]
2. On November 15, 2004, the applicant pled guilty to driving while intoxicated, a violation of Texas Penal Code § 49.04, a Class B misdemeanor. The applicant was sentenced to serve ten days in jail. Case no. [REDACTED]

Counsel, on appeal, asserts that the applicant's convictions occurred almost ten years ago. A time limitation, however, is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a).

Counsel argues that because the applicant did not serve a jail term of more than five days on the above conviction in number one, it does not meet the regulatory definition of a misdemeanor.

Counsel's interpretation of the regulation is incorrect. The regulation clearly states that 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 Texas law, not the specific prison term meted out by the judge in a particular case. Section 521.457 of the Texas Transportation Code provides that driving with an invalid (suspended) license is punishable by confinement in the county jail for not less than 72 hours and not more than six months. Accordingly, the offense is considered a misdemeanor for immigration purposes.

Counsel cites a memorandum issued by U.S. Citizenship and Immigration Services on January 17, 2010, to support his argument that the applicant's conviction in number one above should not disqualify him from maintaining TPS. The cited memorandum specifically pertains to traffic infractions and violations committed in the state of New York;² the [REDACTED] District Court did not classify the above offense to be a Class C misdemeanor.³

²The Associate Director, Service Center Operations, and the Chief, AAO, determined that offenses described as violations and traffic infractions in New York should not be considered disqualifying misdemeanors.

³ Texas Penal Code § 12.23 establishes that Class C misdemeanors are only punishable by fines not to exceed \$500.00

TPS proceedings are separate and distinct from adjustment of status proceedings. Therefore, the assertion of counsel that the applicant is eligible to be grandfathered under section 245(i) of the Act due to a previous filed Form I-130 (Petition for Alien Relative) has no bearing in this matter.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the re-registration application for this reason will be affirmed.

Finally, while not the basis for the dismissal of the appeal, it is noted that the applicant may have a previous conviction of driving while license suspended or driving while intoxicated. The charging document in Case no. [REDACTED] indicates that the driver's license of the applicant was suspended on February 24, 2004.⁴ Section 521.457 of the Texas Transportation Code provides, in pertinent part:

(e) Except as provided by subsections (f) and (f-1), an offense under this section is a Class C misdemeanor.

(f) If it is shown on the trial of an offense under this section that the person *has previously been convicted of an offense* under this section or an offense under section 601.371(a), as that law existed before September 1, 2003, the offense is a Class B misdemeanor.

(f-1) If it is shown on the trial of an offense under this section that *the license of the person has previously been suspended* as the result of an offense involving the operation of a motor vehicle while intoxicated, the offense is a Class B misdemeanor.

[Emphasis added].

This matter must be addressed in any future proceeding.

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.

⁴ The applicant was found responsible as a driver for an accident resulting in serious personal injury or serious property damage.