



U.S. Citizenship  
and Immigration  
Services

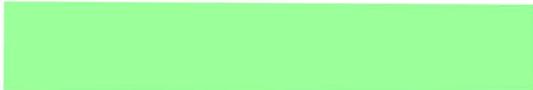
(b)(6)



DATE: JUL 28 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

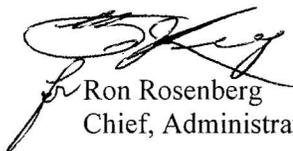
ON BEHALF OF APPLICANT:  


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 application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. On September 5, 2013, the director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction, and that it is illogical for the director to deny the application for failure to provide records that do not exist and are unavailable.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

On May 17, 2013, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests. In response, the applicant submitted a letter from the [REDACTED] County General District Court of the Commonwealth of

Virginia, which indicated that the case regarding the applicant's arrest on May 5, 1995 no longer exists as the court records have been destroyed pursuant to Virginia Code § 16.169.57. The letter indicated, in pertinent part, "Judgment/Conviction Date: Guilty:06/07/1995: Shoot/Throw msle occ bldg.; & Guilty: 06/07/1995: FTA."

The director, in denying the application, determined that just because the court records had been destroyed it did not indicate that the applicant had not been convicted or that the conviction had been dismissed or vacated on its merits; that the applicant had failed to provide sufficient evidence of the final court disposition of his arrests and convictions; that as the court "documentation does not reflect the exact nature of the punishment imposed by the court, it cannot be determined whether you are inadmissible to the United States."

The director concluded that the applicant was ineligible for TPS as he failed to provide evidence necessary for the proper adjudication of the application and denied the application.

The director's finding regarding the applicant's failure to provide court documentation for his arrest on May 5, 1995 is not supported by the record.

At the time the applicant filed the TPS application on July 23, 2001, he provided notarized documentation from the [REDACTED] County Police Department of the Commonwealth of Virginia, which indicated:

- The applicant was arrested on May 5, 1995 for "shoot/throw msle occ bldg.," and that on June 7, 1995, the applicant was adjudged guilty of disorderly conduct, a misdemeanor. The applicant was sentenced to serve 60 days in jail (30 days were suspended). Summons no. [REDACTED]
- The applicant was charged with failure to appear on May 23, 1995, and on June 7, 1995, a *nolle prosequi* was entered for this offense. Summons no. [REDACTED]
- The applicant was arrested on June 12, 1995 for drunk in public or profane, a Class 4 misdemeanor<sup>1</sup>. On July 17, 1995, the applicant was adjudged guilty and ordered to pay a fine. Summons [REDACTED]

Coupled with the fact that the Federal Bureau of Investigation report also indicates that the applicant was convicted of disorderly conduct, we find that the applicant has provided sufficient evidence of a final disposition for his arrest on May 5, 1995. Accordingly, the director's finding on this issue is withdrawn.

The record also contains:

- A notice issued on April 12, 2002, requesting the applicant to provide the final disposition of every charge against him including the arrest, under the alias,

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<sup>1</sup> Class 4 misdemeanors are punishable by a fine only. Virginia Code § 18.2-11(d).

██████████ on January 22, 2001 by the ██████████ Police Department of Texas for driving while intoxicated. The applicant, in response, submitted a letter dated November 13, 2002, from the Records Section, Support Service Bureau for the City of ██████████ which indicates that “[a] search was made within the ██████████ Police Department for this information and no records were found.”

- Court documentation from the District Court of Maryland for ██████████ County, which indicates that on August 17, 2001, the applicant pled guilty and was adjudged guilty of “alch bev/prohib place drink”. The applicant was ordered to pay a fine and court costs. Case no ██████████

However, it is not known if the above conviction in Case no. ██████████ meets the definition of a misdemeanor for immigration purposes. 8 C.F.R. § 244.1. The charging document was not provided and the court documentation in Case no. ██████████ neither lists the classification of the crime nor the pertinent statute or sentencing guide.<sup>2</sup> Additionally, the letter from the ██████████ Police Department has no probative value as it does not list the applicant’s name or his alias, the offense committed and/or the date of the offense/arrest.<sup>3</sup>

As previously noted, the notices of April 12, 2002 and June 10, 2002, requested the applicant to submit the final disposition of every charge against him. The director, in his notice of May 17, 2013, requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, “including but not limited to,” the charges listed in the notice.

The applicant has the burden to establish, with affirmative evidence, that his arrests were dismissed, were in error, or did not result in a conviction for immigration purposes. Therefore, the applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director’s decision to deny the application for this reason 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.

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<sup>2</sup> Any person who violates the provisions of Maryland Alcoholic Beverages § 19-101 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 90 days, or both. Maryland Alcoholic Beverages § 19-102.

<sup>3</sup> The letter was addressed to the applicant’s former counsel.