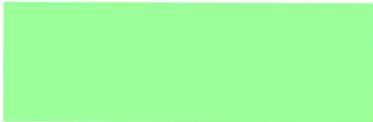


(b)(6)

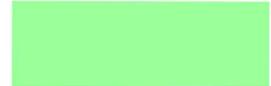


U.S. Citizenship
and Immigration
Services

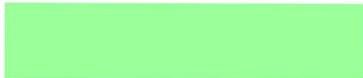


DATE: JUN 27 2014

Office: CALIFORNIA SERVICE CENTER

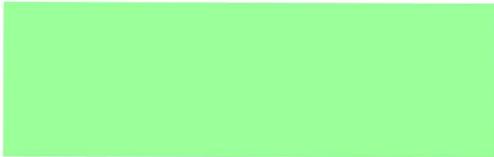


IN RE: Applicant:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. 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.

The director withdrew TPS because the applicant had failed to submit requested court documentation relating to her arrest on [REDACTED] 2011.

On appeal, counsel submits documentation from the Los Angeles County Superior Court and Sheriff's Department Headquarters in California.

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.

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 that the applicant was arrested on: 1) [REDACTED] by the Sheriff's Office, Norwalk, California for driving under the influence; and 2) [REDACTED] by the Police Department, Montebello, California for driving under the influence and driving with .08 percent or more alcohol in the blood.

In response to the notice issued on December 24, 2013, requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- The police report from the Montebello Police Department and court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicates that on [REDACTED] 2012, the applicant pled nolo contendere to violating section 23152(b) VC, driving with .08 percent or more alcohol in the blood, a misdemeanor. Imposition of sentence was suspended and the applicant was placed on summary probation for three years, ordered to pay a fine and court cost and enroll in and successfully complete a nine-month first offender alcohol and drug education and counseling program. The remaining charge, driving under the influence, was dismissed.
- A photocopy of an undated letter from the Sheriff's Department Headquarters of [REDACTED] California, indicating that the Los Angeles Sheriff's Department does not release crime reports or booking records.¹

The director determined that the applicant had failed to submit credible documentation regarding her arrest on [REDACTED] 2011 which is necessary for the proper adjudication of the application. Accordingly, the director withdrew TPS on February 13, 2014.

On appeal, counsel asserts that at the time of the applicant's initial contact with the Norwalk Sheriff's Office, the office "failed to provide her with the correct conviction documents. Norwalk Sheriff's Office has fixed their mistake and the applicant is now able to provide USCIS with the correct arrest disposition."

Counsel submits a letter dated February 26, 2014, from the Sheriff's Department Headquarters of [REDACTED] California, indicating that its office conducted a name only/fingerprint based search of its criminal records and found in the applicant's name an arrest on [REDACTED] 2011 for violating section 23152(a) VC. The letter further indicates that the applicant was released on a citation. Counsel also submits a certified letter from the deputy clerk of the Los Angeles County Superior Court indicating a thorough search of all court records (excluding sealed records) from January 20, 1994 to the present disclosed only Case no [REDACTED]

The applicant has submitted sufficient evidence to establish that she has only one misdemeanor conviction ([REDACTED] 2012), and it does not render her ineligible for TPS under the provisions of

¹ The letter also indicates that USCIS may submit a request to receive a copy of the applicant's record directly from Records and Identification Bureau in [REDACTED] California.

section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw 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 her 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.