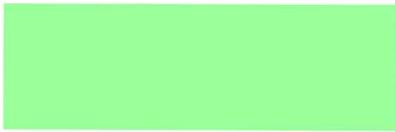


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



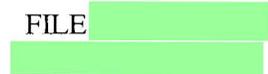
U.S. Citizenship
and Immigration
Services



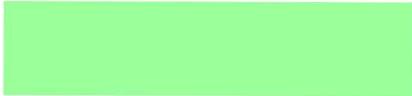
DATE: **MAR 19 2014**

Office: VERMONT SERVICE CENTER

FILE

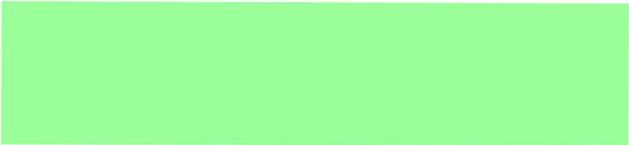


IN RE: Applicant:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the TPS should be reinstated as the applicant does not have more than one crime involving moral turpitude and he has not been convicted of a felony.

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."

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. 8 U.S.C. § 1182(a)(2)(A)(i).

The certified court documents from the Superior Court of Los Angeles County, California reflect the following:

1. On [REDACTED] the applicant was arrested and subsequently charged with violating California Penal Code sections 273.6(a), 602.5(b), 136.1(b)(1), 166(c)(1), 591.5, and two counts of 273.5(a). On May 5, 2010, the complaint was amended to add a violation of California Penal Code section 243(e)(1), battery upon a spouse/cohabitant, and the applicant pled *nolo contendere* to this misdemeanor offense. Imposition of sentence was suspended and the applicant was placed on summary probation for 36 months, ordered to pay a fine and court costs, and complete a 52-week domestic violence counseling session. The remaining charges were dismissed. Case no. [REDACTED]
2. On [REDACTED] the applicant was arrested and subsequently charged with violating California Penal Code sections 273.5(a) and 242-243(e)(1). On [REDACTED] the applicant pled *nolo contendere* to violating California Penal Code section 273.5(a), inflicting corporal injury upon a spouse/cohabitant, a misdemeanor. Imposition of sentence was suspended and the applicant was placed on summary probation for 36 months, ordered to pay a fine and court costs, and complete a 52-week of domestic violence treatment program. The remaining charge was dismissed. On [REDACTED] probation was modified and the applicant was sentenced to serve 20 days in the county jail for violating California Penal Code section 273.5(a). Case no [REDACTED]

Counsel's argument does not take into consideration that U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 244.4(a) clearly states that an alien shall not be eligible for TPS under this section if the Secretary finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Furthermore, 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. (Emphasis added). 8 C.F.R. § 244.14(a)(1). In this case, while the applicant may not have a felony conviction and has one crime involving moral turpitude, the applicant remains 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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw TPS 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.