



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAR 24 2014** Office: VERMONT SERVICE CENTER [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[Redacted]

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On February 22, 2013, the director withdrew TPS because it was determined that the applicant had been convicted of three misdemeanors in the United States.

On appeal, counsel, in his brief, asserts that the director's decision is factually incorrect and a misreading of the applicant's criminal records.

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 AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The director, in his decision, determined that the applicant had been found guilty on: 1) January 5, 2012 of inflicting corporal injury upon a cohabitant; 2) July 6, 2012 of battery and violation of a protection order; and 3) September 25, 2012 of "driving under the influence 23103 and 23152(b)." The record, however, does not support the director's findings.

The Federal Bureau of Investigation report dated January 6, 2012, reflects the applicant's criminal history in the state of California as follows:

1. On January 14, 2011, the applicant was arrested by the [REDACTED] Department for one count of inflicting corporal injury upon spouse/cohabitant. On the same day the applicant was turned over to the Sheriff's Office in [REDACTED] for one count of inflicting corporal injury upon spouse/cohabitant.
2. On July 2, 2011, the applicant arrested under bench warrant by the [REDACTED] Police Department for failure to appear.

The record contains court documentation from the Superior Court of [REDACTED] County, California, which indicated that the applicant was charged with violating section 273.5(a), inflicting corporal injury upon spouse/cohabitant, a misdemeanor. The complaint was amended to add a violation of section 242/243(a), battery, a misdemeanor. On January 5, 2012, the applicant pled no contest to the battery offense and was found guilty. Imposition of sentence was suspended and the applicant was placed on probation for two years and ordered to attend sixteen weeks of anger management sessions. The remaining offense was dismissed. Docket no. [REDACTED]

On January 4, 2013, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests including the arrests on March 24, 2012 for driving under the influence and driving with .08 percent or more alcohol in the blood, and on May 24, 2012, for battery of spouse and violation of court order prevent domestic violence.

The applicant, in response, submitted the following certified court documentation from the Superior Court of [REDACTED], California:

- For the arrest of May 24, 2012, the applicant was found in violation of probation on July 24, 2012. Probation was reinstated and modified to include fifteen additional anger management sessions and a credit of ten days in the county jail. [REDACTED]
- For the arrest of March 24, 2012, the applicant, on July 23, 2012 was charged with violating § 23152(a) VC, driving under the influence of alcohol or drugs, and § 23152(b) VC, driving with .08 percent or more alcohol in the blood. The complaint was amended to add count three, a violation of § 23103/23103.5 VC, reckless driving. On September 25, 2012, the applicant pled no contest and was found guilty of violating § 23103/23103.5, VC, a misdemeanor. The applicant was placed on probation for two years and ordered to attend a level-1

alcohol program, pay a fine and court cost. The remaining offenses were dismissed. [REDACTED]

On appeal, counsel asserts, in pertinent part:

Specifically, the Government noted in the probation order that “there is an agreement to w/draw plea if TPS status is threatened.” Given that the Applicant’s TPS status was “withdrawn in accordance with 8 C.F.R. 244.14,” the Applicant is in the process of returning to the State court in order to withdraw her plea to this offense. It is anticipated that the plea will be successfully withdrawn. The Agency should hold these proceedings in abeyance pending resolution and completion of this process.

Counsel cites no statute or regulation that compels the AAO to hold a decision in abeyance while the applicant seeks post-conviction relief. As such, counsel’s request is denied. Further, without certified documentation from the court indicating that a conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor conviction continues to effect immigration consequences. *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999), *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003),

The court dispositions reflect that the applicant pled no contest to the offenses and the judge ordered some form of punishment and a restraint on the applicant’s liberty to the charges of reckless driving and battery. Therefore, the applicant has been “convicted” of the offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to her 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 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.