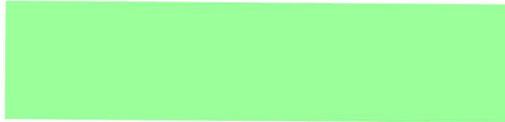




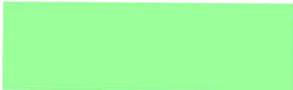
U.S. Citizenship
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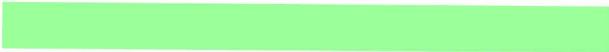


DATE: **MAR 24 2014**

Office: VERMONT 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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 been convicted of two or more misdemeanors in the United States. On appeal, counsel asserts, "misdemeanor crimes which form the basis of denial of TPS are infractions by operation of law."

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 244I(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.

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

The Federal Bureau of Investigation (FBI) report dated January 10, 2012, reflects the applicant's criminal history in the state of California as follows:

1. On January 15, 2005, the applicant was arrested by the Los Angeles Police Department for inflicting corporal injury upon spouse/co-habitant.
2. On May 11, 2007, the applicant was arrested by the Los Angeles Police Department for driving while license suspended.

3. On December 2, 2010, the applicant was arrested by the Los Angeles Police Department for prostitution.

On June 11, 2012, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

- For number three, court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicated that on December 8, 2010, the applicant was charged with violating section 653.22(a) PC, loiter - with intent to commit prostitution, a misdemeanor. On February 15, 2012, the applicant pled *nolo contendere* to violating section 653.22(a) PC. Imposition of sentence was suspended and the applicant was placed on summary probation for 24 months and ordered to pay a fine and court cost.
- For number two, a police citation issued on November 6, 2005 for violating two infractions and section 14601.1(a) VC, driving while license is suspended, a misdemeanor. The citation advised the applicant to appear in court on December 21, 2005. On January 11, 2006, a charge of violating section 40508(a) VC, failure to appear, a misdemeanor, was added to the complaint. On April 10, 2006, the applicant pled *nolo contendere* to violating sections 14601.1(a) VC and section 40508(a) VC. For violating section 14601.1(a) VC, imposition of sentence was suspended and the applicant was placed on probation for 36 months and ordered to pay court cost and a fine or serve 10 days in jail. For violating section 40508(a) VC, the applicant was ordered to pay a fine. [REDACTED]. The applicant subsequently violated the terms of his probation and on May 14, 2007, the applicant was sentenced to serve 20 days in jail. [REDACTED].

It is noted that the record does not support the director's finding that the applicant had pled guilty on April 10, 2006 and May 11, 2007 to driving on a suspended license. As noted above, the applicant was arrested on May 11, 2007, due violation of probation, which resulted in a probation modification of 20 days in the county jail on May 14, 2007. This was a harmless error by the director, which did not affect the outcome of the decision and did not prejudice the applicant.

On appeal, counsel submits certified documentation from the Los Angeles Superior Court granting the applicant's motion to reduce the misdemeanor convictions to infractions pursuant to sections 17(d) PC and 19.8 PC on July 19, 2013 in [REDACTED]

In the instant case, the court did not erase the applicant's record of guilt, instead, it modified the original charges so that the applicant stood convicted of infractions, not misdemeanors. *See Matter of Cota-Vargas*, 23 I & N Dec. 849, holding that a criminal court's decision to modify or reduce an alien's criminal sentence is valid for immigration purposes regardless of the court's reason for the modification or reduction. Therefore, the director's finding regarding the misdemeanor convictions in [REDACTED] is withdrawn.

The case will be remanded to the director for further adjudication of the application. The record reflects that the applicant did not provide the requested court disposition for his arrest on January 15, 2005, for inflicting corporal injury upon spouse/co-habitant, and was not addressed in the director's decision. Further, the current FBI report dated April 1, 2013, indicates that the applicant has been arrested on April 13, 2012 for theft and on May 4, 2012 for loiter-prostitution. These offenses may render him ineligible and inadmissible for the benefit sought. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.