



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 07 2014

Office: VERMONT SERVICE CENTER

FILE: [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: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 December 23, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant requests that his TPS be reinstated because the convictions occurred years ago and he has not committed any violations since then. The applicant states that he has been residing in the United States for over 25 years and has a family to support.

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.

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.

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 record contains certified court documentation from the [REDACTED] Court of Texas, which reflects the following:

1. On June [REDACTED] the applicant was arrested and charged with burglary of a motor vehicle, a violation of Texas Penal Code 30.04(a). On June [REDACTED] the applicant pled guilty and was adjudged guilty of the Class A misdemeanor offense and was sentenced to serve 90 days in the county jail and ordered to pay court costs. Cause no. [REDACTED]

This offense is a crime involving moral turpitude which would render the applicant inadmissible to the United States under section 212(a)(2)(A)(i)(1) of the Act. However, since the applicant was convicted of a single crime involving moral turpitude and was not sentenced to more than six months incarceration, he is eligible for the "petty offense exception" and is not found inadmissible.

2. On July [REDACTED] the applicant was arrested and charged with driving while intoxicated, a violation of Texas Penal Code 49.04. On August [REDACTED] the applicant pled guilty to the Class B misdemeanor offense and was sentenced to serve 15 days in the county jail and ordered to pay court costs. Cause no. [REDACTED]

The applicant's statements made on appeal have been considered. A time limitation, however, is not provided for criminal activities for applicants for TPS under section 244(c)(2)(B)(i) of the Act, and as provided in 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. The applicant is ineligible for TPS due to his 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that a removal hearing was held on March [REDACTED] and the applicant was granted voluntary departure from the United States on or before May [REDACTED], with an alternate order of removal to take effect in the event that the alien failed to depart as required. The applicant appealed the Immigration Judge's decision to the Board of Immigration Appeals (BIA). On June [REDACTED], the BIA administratively closed the case in order for the applicant to apply for TPS. Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

ORDER: The appeal is dismissed.