



U.S. Citizenship  
and Immigration  
Services

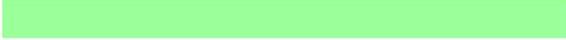
(b)(6)



DATE: NOV 13 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

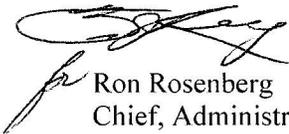
ON BEHALF OF APPLICANT:



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.

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the denial of his re-registration application.<sup>1</sup> The matter is now before the Administrative Appeals Office (AAO). The case will be remanded for further action.

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 March 10, 2014, the director denied the re-registration application because the applicant failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits the requested court documents.

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.

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). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The Federal Bureau of Investigation report dated March 27, 2013 reflects that the applicant was arrested by the [REDACTED] Police Department on March [REDACTED], for one count of theft, and on October 24, 2012, for one count of loiter/ intent to commit prostitution.

Along with his re-registration application, the applicant provided a statement indicating "[o]n or about [REDACTED] I was arrested by [REDACTED] PD for 490.1(A) went to Court, paid fine, Case Closed."

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<sup>1</sup> The applicant listed the receipt number of the current Form I-821 on the appeal form.

On September 6, 2013, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests including the arrest on “[REDACTED]”. The applicant was also advised that for any charge involving prostitution, or disorderly conduct involving prostitution, the applicant must provide the police report or court documentation outlining the details of the charge; the documentation should indicate whether the applicant was soliciting a prostitute on his own behalf or he was a prostitute for hire. The applicant, however, failed to respond to the notice. Accordingly, the director denied the re-registration application and withdrew TPS.

On appeal, counsel submits certified court documentation in Case [REDACTED] from the Superior Court of [REDACTED] County, California, which indicates that on March 30, 2011, the applicant was charged with an infraction offense of violating section 490.1(a) PC, petty theft. On April 13, 2011, the applicant pled *nolo contendere* to the infraction offense and was ordered to pay a \$50 fine.

Counsel also submits from the Superior Court of [REDACTED] County, California: a) a Certificate of Discharge/Exoneration of Bond in Booking [REDACTED] relating to the violation of section 653.33(A) PC, loiter/ intent to commit prostitution. The certificate indicates that the bail was terminated on December 4, 2012; and 2) a Bail Receipt &/or Notice to Appear relating to Bond [REDACTED]. The bail receipt is stamped “No Charges Filed”.

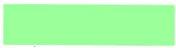
The federal court and the Board of Immigration Appeals in *Kepilino v. Gonzales*, 454 F. 3d 1057, 1062 ( 9<sup>th</sup> Cir. 2006) and *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 553 (BIA 2008), have adopted the Department of State’s definition of “prostitution” in relation to inadmissibility under section 212(a)(2)(D) of the Act, which provides:

The term “prostitution” means engaging in *promiscuous* sexual intercourse for hire. A finding that an alien has “engaged” in prostitution must be based on *elements of continuity and regularity*, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of *casual or isolated acts*.

[Emphasis in original] 22 C.F.R. § 40.24(b) (2006).

In the instant case, the applicant’s one arrest for loiter with intent to commit prostitution does not meet the elements of *continuity and regularity*. Coupled with the fact that no charges were filed for this violation, we conclude that the arrest report is no longer required in this proceeding.

Although the issue of the applicant’s statement relating to a [REDACTED] arrest for violating section 490.1(A) PC has not been addressed on appeal, we have determined that the date is a typographical error. A review of the applicant’s asylum application, supporting documents, initial TPS application and previous re-re-registration applications, reflects that the applicant has always maintained that he first entered the United States on July 22, 1990.



We conclude that the applicant has, on appeal, overcome the director's findings. Therefore, the director's decision of March 10, 2014 will be withdrawn. The validity period of the applicant's fingerprint check, however, has expired.

Accordingly, the case will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him 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).

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