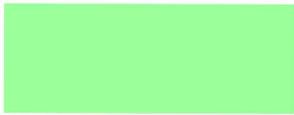




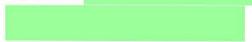
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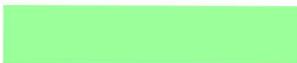
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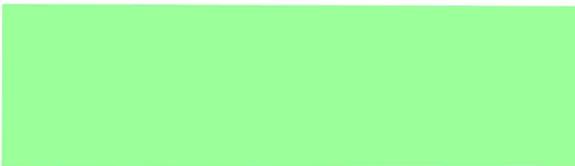
Office: VERMONT SERVICE CENTER

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:

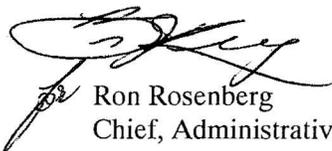


INSTRUCTIONS:

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,



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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.¹ The matter is now before the Administrative Appeals Office (AAO). 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 March 4, 2014, the director denied the re-registration application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant asserts that there are no court documents available for the applicant's arrests in 1989, 1991 and 1992; that no criminal charges were filed regarding the applicant's arrests on January 24 and 25, 1999; and that the applicant has an upcoming hearing to determine if his plea of *nolo contendere* to the misdemeanor offense of reckless driving should be set aside. Counsel states that the applicant should not be required to submit unavailable conviction records, and that confirmation from relevant criminal courts indicating that such records have been destroyed should be sufficient to carry the applicant's evidentiary burden.

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."

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

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 (FBI) report dated February 7, 2004, reflected the applicant's criminal history in the state of California as follows:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

In response to a notice issued on April 30, 2004, which requested certified copies of the final dispositions for the above arrests, the applicant submitted an Interagency Memorandum dated January [REDACTED] from the Supervising Deputy District Attorney of the [REDACTED] Office, indicating that due to lack of sufficient evidence, no criminal charges should be filed regarding the applicant's arrest on January [REDACTED] DA Case # [REDACTED]. The applicant also submitted a certified letter dated May 17, 2004, from a representative for the Record Divisions of [REDACTED] County Sheriff's Department, which listed the following five arrests and dispositions:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The record also contains the following:

- A letter dated November 1, 2010 from the [REDACTED] County Superior Court, relating to the applicant's arrests on January [REDACTED]. The letter indicated that it had been determined that the charges (sex with minor, lewd/lascivious acts and child abuse) may not have been filed, or the files(s) may have been destroyed pursuant to government code 68152. Booking #s [REDACTED]
- Documents dated October 26, 2010, March 29, 2011 and April 28, 2014 from the [REDACTED] County Superior Court indicating that the cases for [REDACTED] mentioned above were no longer available as the records had been purged pursuant to government code 68152.
- Court documentation in Case [REDACTED] from the [REDACTED] County Superior Court, which indicated that on March 11, 2002, the applicant was charged with violating section 12500(a) VC, driving without a license. On July [REDACTED] the applicant pled guilty to this misdemeanor offense. The applicant was placed on probation for 24 months and ordered to pay a fine.

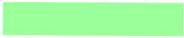
The FBI report dated April 1, 2013, indicates "no disposition available" for the arrests occurring on January [REDACTED] and July [REDACTED], and that no charges were filed due to lack of sufficient evidence for the arrests occurring on January [REDACTED]

The FBI report dated April 1, 2013 also indicates that on January [REDACTED] the applicant was arrested by the [REDACTED] Police Department for driving under the influence, driving with .08% or more alcohol in the blood, and driving without a license.

On appeal, counsel provides the court documentation in Case # [REDACTED] from the Superior Court of [REDACTED] County, relating to the arrest on January [REDACTED]. The court documentation indicates that on April 29, 2013, the applicant was charged with driving under the influence. On May 30, 2013, the complaint was amended to include a violation of section 23103(a) VC, reckless driving. The applicant pled *nolo contendere* to this misdemeanor offense and he was adjudged guilty of the offense. The applicant was placed on probation for 36 months on condition he serves two days in jail (credited for time served), pays a fine, court costs, and attend and complete a Wet reckless program. The charge of driving under the influence was dismissed pursuant to section 1385 PC.

The applicant is ineligible for TPS due to his two misdemeanor convictions (Case #s [REDACTED]). Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect the underlying charges or convictions. The burden is on the applicant to provide affirmative evidence that he is eligible for the benefit sought. Consequently, the director's decision to deny the re-registration application and withdraw TPS will be affirmed.

(b)(6)



NON-PRECEDENT DECISION

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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.