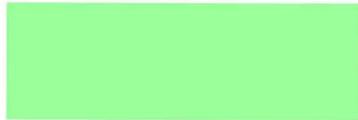




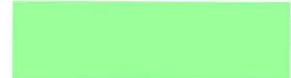
U.S. Citizenship
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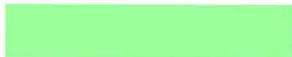


DATE: NOV 17 2014

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: 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. 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 5, 2014, the director withdrew TPS and denied the re-registration application because the applicant failed to submit the requested court disposition for his arrest on November 29, 2004.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 Federal Bureau of Investigation (FBI) report indicates that on November 29, 2004, the applicant was arrested by the ██████████ County Sheriff's Office (Florida) for count one, molesting stone crab traps (FAC 68B-13.011(4)), a felony of the third degree; count two, possession of whole stone crabs (FAC 68B-13.007(2)), a misdemeanor of the second degree; and count three, possession of undergrown mangrove snappers (FAC 68B-14.0035(7)(d)), a misdemeanor of the second degree.

In response to the notice of December 6, 2013, which requested certified judgment and conviction documentation of the above arrest, the applicant only provided a letter dated January 30, 2009 from the Florida Department of Corrections, which released him from supervised probation. The director, in her decision of March 5, 2014, determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, the applicant submits a printout of his criminal case from the website of the [REDACTED] County, Florida Clerk of the Circuit Court.¹ The printout indicates that on January 31, 2005, a plea form, conditions of probation and sentencing guidelines were initiated and adjudication of guilty was withheld for count one. On February 10, 2005, the applicant was adjudicated guilty of violating counts two and three. For count one, the applicant was placed on probation for four years, ordered to pay a fine and court costs and perform community service. For counts two and three, the applicant was placed on probation for six months and ordered to perform community service. Case no. [REDACTED]

It is noted that the FBI report indicates that count one was treated as a misdemeanor offense. The printout from the [REDACTED] County, Florida Clerk of the Circuit Court neither confirms nor disputes the FBI's report. As the applicant failed to submit the requested certified disposition from the court, the record of proceeding is devoid of evidence to establish if he was convicted of a felony or a misdemeanor for count one.

Nevertheless, the applicant remains ineligible for TPS as he has either three misdemeanor convictions or a felony and two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Compliance with the court's orders does not alleviate the applicant of any convictions that had occurred or dismisses any convictions. There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw TPS and deny the re-registration application 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.

¹ See [https://\[REDACTED\]](https://[REDACTED]) Cases accessed March 12, 2014.