



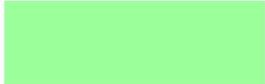
U.S. Citizenship
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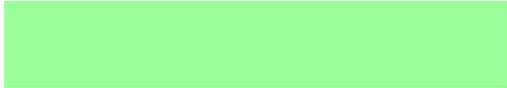


DATE: **OCT 08 2014**

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. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 February 25, 2014, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant's convictions constitute traffic violations as opposed to criminal misdemeanor convictions. Counsel states that even if the director "considered [the applicant's] convictions to disqualify him from TPS, he was not provided the opportunity to pursue a waiver under section 212 of the [ACT]."

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.

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."

In response to the notice issued on September 6, 2013, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant

submitted court documents from the Fairfax County General District Court for the Commonwealth of Virginia, which indicated the following:

1. On February 7, 2006, the applicant pled guilty to and was adjudged guilty of violating Virginia Code § 18.2-266, driving while intoxicated – 1st offense, a Class 1 misdemeanor. The applicant was sentenced to serve 60 days (suspended) and ordered to pay a fine and court costs. Case no. [REDACTED]
2. On August 28, 2013, the applicant was adjudged guilty of violating Virginia Code §18.2-460(d), false information to law enforcement, a Class 1 misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]
3. On September 11, 2013, the applicant pled guilty to and was adjudged guilty of violating Virginia Code § 46.2-300, no driver's license, a Class 2 misdemeanor. The applicant was ordered to pay a fine and court cost. Case no. [REDACTED]

The regulation clearly states that a misdemeanor is a crime “*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*” [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is “*punishable* by imprisonment for a maximum term of five days or less.” [Emphasis added.] The operative word is “punishable,” which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Virginia law, not the specific prison term meted out by the judge in a particular case. The punishments for a conviction of a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both, and for a Class 2 misdemeanor is confinement in jail for not more than six months and a fine of not more than \$1,000, either or both. Virginia Code § 18.2-11. The applicant, in this case, is applying for benefits under the federal law. Therefore, the definition of a misdemeanor as stated in 8 C.F.R. § 244.1 applies in this case.

Contrary to counsel's assertion, the applicant, in this proceeding, is not eligible to apply for a waiver under section 212 of the Act. The director, in withdrawing TPS, did not find the applicant to be inadmissible under any of the provisions of section 212(a) of the Act. The applicant was found to be 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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.

ORDER: The appeal is dismissed.