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U.S. Citizenship
and Immigration
Services

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 31, 2014, the director denied the re-registration application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel acknowledges the applicant's convictions for driving under the influence in the state of Pennsylvania, but asserts, in pertinent part, "[v]iolation of that statute though classified as a misdemeanor under Pennsylvania law, is not a "crime"" for purposes of the Act. Counsel states that the finding by the State court that the applicant was in violation of the Pennsylvania law did not constitute a "conviction" for immigration purposes.

Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.² However, more than five months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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.

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

² Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

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 report reflects the applicant’s criminal record in the Commonwealth of Pennsylvania as follows:

1. On July 18, 2005, the applicant was arrested by the Philadelphia Police Department for driving under the influence of alcohol or controlled substance.
2. On June 8, 2009, the applicant was arrested by the Police Department of [REDACTED] for two counts of driving under the influence - general impairment/incapable of safe driving - of alcohol or controlled substance, and careless driving.

On April 24, 2012, the applicant was advised that the record of proceedings contained judgment and conviction documents from the First Judicial District of Philadelphia indicating that on October 28, 2005, he had been convicted of a misdemeanor offense of driving under the influence of alcohol, a violation of 75 PA C.S. § 3802. Docket no. [REDACTED] The applicant was requested to provide certified judgment and conviction documents from the court(s) for all arrests including his arrest on June 8, 2009.

The applicant, in response, submitted court documentation from the Seventh Judicial District, [REDACTED] County, Pennsylvania, which indicates that on September 25, 2009, the applicant was charged with driving under the influence - 2nd offense, a violation of 75 PA Code § 3802(a)(1), a misdemeanor. The violation did result in an accident resulting in property damage or bodily injury. The applicant was also charged with driving under the influence – blood alcohol content .16% or higher - 2nd offense, a violation of 75 PA Code § 3802(c), a Class 1 misdemeanor. On November 13, 2009, the applicant pled guilty to the offenses. Docket # [REDACTED]

The punishment for an individual who violates a second offense of § 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property shall be imprisoned for no less than 30 days and pay a fine of not less than \$750. 75 PA Code § 3804(b)(2). The punishment for an individual who violates a second offense of § 3802(c), shall be sentenced to not less than 90 days and pay a fine of not less than \$1500. 75 PA Code § 3804(c)(2). In Docket # [REDACTED] the applicant received a sentence of not less than 90 days in Bucks County Correctional Facility and was ordered to pay a \$1500 fine.

As cited above, for immigration purposes, a felony is a crime “punishable by imprisonment for . . . more than one year, regardless of the term . . . actually served.” [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 Pennsylvania law, not the

specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of offenses punishable by up to 30 and 90 days incarceration, which meets the definition of misdemeanors for immigration purposes.

For immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act. The applicant is therefore ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.