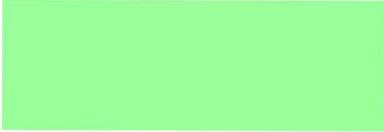




U.S. Citizenship
and Immigration
Services

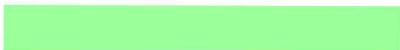
(b)(6)



DATE: **OCT 29 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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 case will be remanded for further consideration and 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 April 3, 2014, the director denied the re-registration application because it was determined that the applicant had been convicted of an aggravated felony in the United States. The director also determined that the applicant was inadmissible to the United States under section 212(a)(6)(E)(i) of the Act due to this conviction.

On appeal, counsel asserts that the director's decision is in error as the applicant was not convicted of an offense classified as an aggravated felony and that the applicant is eligible for a waiver. Counsel states that the applicant was convicted of a misdemeanor offense as the description of the judgment refers to the violation as a petty offense.

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.

In denying the re-registration application, the director determined that the applicant's conviction of 18 U.S.C. § 2, was an aggravated felony.

The record, however, does not support this finding. The court document provided by the applicant indicates that he pled guilty to a "petty offense" of 8 U.S.C. § 1325/18 U.S.C. § 2, aiding and abetting improper entry by an alien. The applicant was sentenced to a term of 60 days (credited with time served). Case no. [REDACTED].

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

This office obtained a printout docket² of the criminal docket in Case no. [REDACTED] from the U.S. District Court, [REDACTED] which indicates that three counts of violating 8 U.S.C. § 1324, bringing in and harboring aliens – illegal alien transportation, were dismissed; that on June [REDACTED], the applicant entered a guilty plea of violating 8: U.S.C. §1325/18:2, improper entry by an alien: aiding and abetting; that the court handled the violation as a petty offense; and that the applicant was sentenced to 60 days (credited with time served), no term of supervised release imposed, no fine issued, and special assessment waived.

The term “petty offense” means a Class B misdemeanor, a Class C misdemeanor, or an infraction, for which the maximum fine is no greater than the amount set forth for such an offense in section 3571(b)(6) or (7) in the case of an individual or section 3571(c)(6) or (7) in the case of an organization. 18 U.S.C. § 19.

The court documentation indicates that the applicant was not convicted of an aggravated felony or a felony offense. Therefore, the above conviction does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). Accordingly, the director's decision to deny the re-registration application and withdraw TPS on this ground will be withdrawn.

The second issue to be addressed is the applicant's inadmissibility to the United States.

Pursuant to 8 C.F.R. § 244.3(b), U.S. Citizenship and Immigration Services (USCIS) may waive inadmissibility under the provisions of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds that may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Grounds of Inadmissibility.

The director correctly stated that the applicant is inadmissible to the United States under section 212(a)(6)(E)(i) of the Act. However, the director erroneously stated that there is no waiver of this ground of inadmissibility. Inadmissibility to the United States under section 212(a)(6)(E)(i) of the Act is not one of the grounds of inadmissibility that may not be waived as set forth at 8 C.F.R. § 244.3(c). Pursuant to 8 C.F.R. 244.3(b), inadmissibility under section 212(a)(6)(E)(i) of the Act may be waived on a Form I-601.

Accordingly, the case is remanded so that the director shall accord the applicant the opportunity to file an application for waiver of inadmissibility regarding section 212(a)(6)(E)(i) of the Act, and then the Form I-601 shall be adjudicated.

The case will also be remanded for the purpose of sending the applicant a fingerprint notification form as the validity period of his fingerprint check has expired. The director may request any

² From the Public Access to Court Electronic Records (PACER).

additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS.

Following completion of these requirements, the director will render a new decision. Should the decision(s) 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).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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