



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 29 2014**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 March 18, 2014, the director withdrew TPS because the applicant: 1) had been convicted of two misdemeanors in the United States; 2) was found inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction; and 3) failed to submit final dispositions for all arrests.

In her decision, the director inadvertently listed the receipt number for the re-registration application. The decision, however, was based solely on the withdrawal of the applicant's TPS. Therefore, the appeal filed by the applicant on April 18, 2014, will be associated with the underlying TPS application, [REDACTED]

On appeal, counsel submits certified court documentation indicating that the applicant's drug conviction had been vacated due to legal defect. Counsel also submits court documentation relating to some of the applicant's remaining offenses.

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).

"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.

The Federal Bureau of Investigation report reflects the applicant's criminal history in the state of North Carolina as follows:

1. On September 5, 1999, the applicant was arrested for felony possession of cocaine and subsequently charged with possession of drug paraphernalia, a violation of NCGS § 90-113-22, a Class 1 misdemeanor. The applicant pled guilty to a lesser degree. The applicant was sentenced to serve 45 days in jail, ordered to pay a fine and court costs, and placed on probation for six months. Case no. [REDACTED]
2. On May 21, 2011, the applicant was arrested for driving while impaired, a violation of NCGS § 20-138.1(a), a misdemeanor. The applicant was sentenced to serve 60 days in jail, ordered to pay a fine and court costs, and placed on probation for 12 months. Case no. [REDACTED].

On December 23, 2013, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. On January 27, 2014, the applicant through counsel submitted the following:

- A certified document from the Clerk of [REDACTED] Superior Court indicating that Cases [REDACTED], [REDACTED], [REDACTED] and [REDACTED], have been destroyed or purged from its system in accordance with its retention period.
- A certified court inquiry printout in Case no. [REDACTED] relating to the arrest on September 5, 1999 for felony possession of cocaine. The document indicates that the court's judgment was vacated on September 6, 2013, and that the charge was voluntarily dismissed on November 5, 2013.
- A certified court inquiry printout in Case no. [REDACTED] relating to an arrest on September 5, 1999 for driving while impaired. On September 17, 1999, a *nolle prosequi* was entered for this offense.

In her decision, the director noted that although court documents had been destroyed or purged, a printout from the North Carolina Public Safety, Offender Public Information indicated that the applicant had been convicted of the drug offense under Docket # [REDACTED]. The director determined that as the drug conviction could have resulted in incarceration for a period of five days or more, for immigration purposes, the applicant had a misdemeanor drug conviction. The director determined that the applicant was inadmissible to the United States under section 212(A)(2)(II) of the Act due to the drug conviction. The director further determined that the requested court disposition for the applicant's arrest on May 21, 2011 as well as the final dispositions in Case nos. [REDACTED] and [REDACTED] had not been submitted.

On appeal, counsel indicates that Case no. [REDACTED] listed in the director's decision is a typographical error as it relates to another individual. Counsel provides certified court inquiry printouts in Case no. [REDACTED] which relate to a female defendant who was arrested on August 18, 1999 for driving while license revoked and expired registration card/tag.

The record reflects that the director obtained a printout dated February 19, 2014, from the website of the North Carolina Public Safety, Offender Public Information,¹ which associated Case no. [REDACTED] with the applicant's arrest on September 5, 1999. Therefore, the typographical error occurred within the North Carolina Department of Public Safety. Nevertheless, certified credible evidence has been presented to establish that Case no. [REDACTED] does not relate to the applicant.

Counsel also submits a copy of an Order in Case no. [REDACTED] from the General Court of Justice, District Court Division, [REDACTED] North Carolina, which indicates that on September 7, 1999 the applicant was charged with possession of cocaine; that on December 28, 1999, the applicant pled guilty to a misdemeanor possession of drug paraphernalia; that the applicant was not advised of the immigration consequences of a guilty plea ; and that on September 6, 2013, the judge vacated the case.

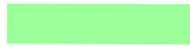
Counsel submits an additional certified court inquiry printout in Case no. [REDACTED] which reiterates that subsequent to the court vacating the drug conviction, the case was voluntarily dismissed on November 5, 2013. A conviction that has been vacated due to procedural or substantive defects in the underlying proceedings is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

Counsel has provided sufficient documentation from the court indicating that the drug misdemeanor conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, the applicant no longer remains convicted of the above drug offense. *Matter of Adamiak, supra, Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

Counsel also submits a certified court inquiry printout in Case no [REDACTED] relating to an arrest on May 21, 2011 for driving while impaired, a violation of NCGS § 20-138.1(a). On April 13, 2012, the applicant pled guilty to this misdemeanor offense. The applicant was sentenced to serve 60 days in jail, ordered to pay a fine and court costs, and placed on probation for 12 months.

Although the Clerk indicated that Cases [REDACTED], [REDACTED], [REDACTED] and [REDACTED] had been destroyed, the applicant was provided with court inquiry printouts for two of the four cases. No explanation has been provided why inquiry printouts were not provided for the remaining two cases ([REDACTED] and [REDACTED]). As the courts routinely destroy old records as a matter of administrative procedure, this act does not affect an underlying charge or

¹ [REDACTED]



conviction. The applicant has the burden to establish with affirmative evidence that the offenses in Case nos. [REDACTED] and [REDACTED] were dismissed or were in error.

The applicant has failed to provide any evidence revealing the final court dispositions in Case nos. [REDACTED] and [REDACTED]. Therefore, the applicant remains ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). 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.