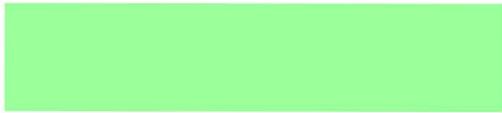




U.S. Citizenship  
and Immigration  
Services

(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: 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 December 11, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that he has been arrested only once and that his case is now closed. The applicant submits additional copies of the court disposition relating to his arrest.

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."

Along with the filing of his re-registration application and in response to the notice issued on September 9, 2013, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted the following:

Court documentation in Docket no. [REDACTED] from the [REDACTED] District Court of the Commonwealth of Massachusetts, which indicates that on May 31, 2011, the applicant was charged with count one, operating motor vehicle under influence of liquor, a violation of M.G.L. chapter 90, section 24(j), and count two, reckless operation of motor vehicle a violation of M.G.L. chapter 90 section 24(o), both misdemeanors. On July 8, 2011, the applicant admitted to sufficient facts to both charges.<sup>1</sup> Sufficient facts were found and each offense was continued without a guilty finding for one year. For count one, the applicant was ordered to pay court cost, attend a 24-day alcohol program and loss of license for 45 days. For count two, the applicant was placed on administrative supervision. On July 6, 2012, the case was closed.

The fact that the above case has been closed does not alleviate the applicant of the convictions that had occurred nor dismisses any convictions for immigration purposes. The court documents submitted reflect that the applicant admitted sufficient facts to each charge, and the judge ordered some form of penalty and/or restraint on the applicant's liberty to each charge above. Therefore, 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 ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, 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.

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<sup>1</sup> An admission to "sufficient facts" is deemed to be an admission to facts sufficient to warrant a finding of guilt. See *Luk v. Commonwealth*, 658 N.E.2d 664, 667 n.6 (Mass. 1995) (citing *Commonwealth v. Duquette*, 386 Mass. 834, 438 N.E.2d 334, 337 (1982)).