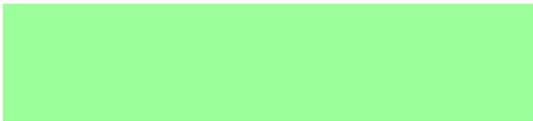




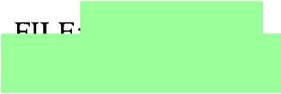
U.S. Citizenship  
and Immigration  
Services

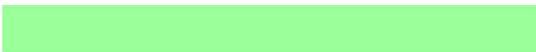
(b)(6)



DATE: **SEP 16 2014**

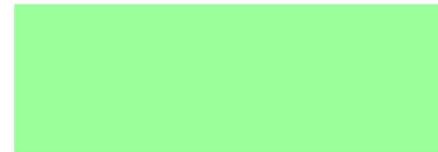
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the denial of the re-registration application<sup>1</sup> and 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 13, 2014, the director denied the application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, citing 8 C.F.R. § 244.14(a)(1), counsel asserts that as the withdrawal of TPS is within the discretion of the director, it is requested that TPS be reinstated as the applicant has three children to support. Counsel states that the applicant has demonstrated that he is a hardworking family man and his TPS should not be withdrawn.

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. 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."

The record contains court documentation dated October 8, 2012, from the County Clerk for [REDACTED] County, Texas, which indicates:

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<sup>1</sup> The applicant through counsel listed the receipt number of the current Form I-821 on the appeal form.

1. On October 3, 2010, the applicant pled *nolo contendere* to driving while intoxicated (charged August 26, 2010), a violation of Texas Penal Code § 49.04, a Class B misdemeanor. The applicant was placed on probation for 12 months and ordered to pay court costs. Cause no. [REDACTED]
2. On June 1, 2012, the applicant pled guilty to and was adjudged guilty of driving while intoxicated – 2<sup>nd</sup> offense (charged February 6, 2012), a violation of Texas Penal Code § 49.04, a Class B misdemeanor. The applicant was sentenced to serve 40 days in jail and ordered to pay court costs. Cause no. [REDACTED]

The applicant asks that TPS be reinstated as a matter of discretion. The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no discretionary waiver available to the applicant under the Act or the regulations. Consequently, the director's decision to deny the re-registration 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.