



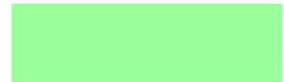
U.S. Citizenship
and Immigration
Services

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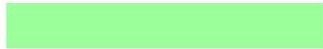


DATE: SEP 16 2014

Office: VERMONT SERVICE CENTER

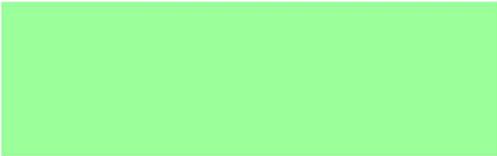


IN RE: Applicant:



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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 October 8, 2013, the director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant's failure to respond to the director's notice requesting the disposition for his arrest was not willful and should not be considered a failure to re-register without good cause.

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.

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 that on June 7, 2012, the applicant was arrested by the [REDACTED] Police Department (New Jersey) and subsequently charged with aggravated assault and manslaughter.

On August 21, 2013, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant, however, failed to respond within the allotted time. Accordingly, the director withdrew TPS.

On appeal, counsel provides a letter dated October 30, 2013, from a presiding judge for the Criminal Division, Superior Court for New Jersey, who indicates that the applicant has a case pending before the court, under indictment no. [REDACTED] for first degree aggravated manslaughter, a violation of N.J. Statute 2C:11-4B and second degree aggravated assault, a violation of N.J. Statute 2C:12-1B(1).

Based on the documentation submitted on appeal, we have determined that the applicant has submitted sufficient evidence to overcome the decision of the director. As the court proceedings for the above charges were pending at the time of the director’s decision, the applicant was not ineligible for TPS under section 8 C.F.R. § 244.14(a)(1).

However, as over ten months has lapsed since the letter from the Criminal Division, Superior Court of New Jersey was received by U.S. Citizenship and Immigration Services, the case will be remanded for the director to revisit this matter to determine whether the case remains pending or final dispositions of the charges have been entered by the court. The applicant still bears the burden of establishing that the offenses were dismissed or were in error.

Further, the validity period of the applicant’s fingerprint check has expired. Therefore, the case will also be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements.

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

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