



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 19 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. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 his re-registration application¹. 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 February 26, 2014, the director denied the re-registration application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits the requested court dispositions relating to his criminal record.

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."

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

The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

The Federal Bureau of Investigation report reflects the applicant's criminal record in the state of Texas as follows:

1. On August 10, 2004, the applicant was arrested by the Sheriff's Office in [REDACTED] for assault causing bodily injury upon family member.
2. On August 19, 2004, the applicant was arrested by the Sheriff's Office in [REDACTED] for assault causing bodily injury upon family member.
3. On March 3, 2012, the applicant was arrested by the [REDACTED] City Police Department for liquor violation.
4. On March 24, 2012, the applicant was arrested by the [REDACTED] City Police Department for assault causing bodily injury upon family member and unlawful restraint.

On August 22, 2013, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

- A Motion to Dismiss [REDACTED] filed before the court in [REDACTED] County, Texas, and an Order, from a presiding judge in JP PCT #3 [REDACTED] County, Texas, dismissing a case.
- An Affidavit for Arrest Warrant or CAPIAS signed July 21, 2004 by the Magistrate in and for [REDACTED] County, and a Motion to Dismiss [REDACTED] filed by the District Attorney for [REDACTED] County, Texas on September 13, 2005. The District Attorney requested that the case be dismissed as the witness had not been subpoenaed and without testimony of the witness the State was unable to present a prima facie case.

The director, in denying the re-registration application, determined that the applicant had failed to submit sufficient evidence necessary for the proper adjudication of the application.

On appeal, the applicant submits from the Municipal Court for the City of [REDACTED] City and the County Court for [REDACTED] County the following:

- Court documentation which indicates that on March 15, 2012, the applicant was convicted of public intoxication and was ordered to pay a fine. Docket no. [REDACTED]
- An Affidavit for Arrest Warrant or CAPIAS signed August 2, 2004 by the Magistrate in and for [REDACTED] County, and additional copies of the Affidavit for Arrest Warrant or CAPIAS signed July 21, 2004 and the Motion to Dismiss in Case no. [REDACTED] filed before the court on September 13, 2005.

It is noted that in response to an earlier request (June 13, 2005), the record contains a document from the Criminal Court of ██████ County dated July 12, 2005, informing the applicant of the court's continuance scheduled for September 13, 2005 in Case nos. ██████

While the applicant has provided sufficient evidence reflecting the final disposition for his arrest on March 3, 2012, he has failed to provide sufficient evidence revealing the final disposition of his arrests on August 10 and 19, 2010. The documents submitted only serve to establish that a request for dismissal was filed before the court by the District Attorney on September 13, 2005. Furthermore, the applicant has not provided sufficient evidence relating to the final disposition of his arrest on March 24, 2012. As the court documentation from ██████ County, Texas does not indicate the arrest date and/or the violation(s) committed, it cannot be concluded that the Order dismissing the case relates to the arrest on March 24, 2012. The applicant has the burden to establish, with affirmative evidence, that no charges were filed or that the charges were dismissed or were in error.

The applicant remains ineligible for TPS because of his failure to provide sufficient information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). 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.