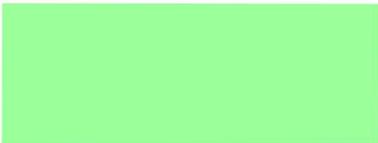




U.S. Citizenship
and Immigration
Services

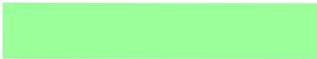
(b)(6)



DATE: **SEP 22 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

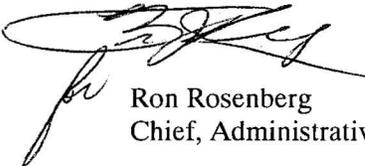
ON BEHALF OF APPLICANT: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 January 10, 2014, 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 only one misdemeanor conviction. The applicant submits additional copies of the court dispositions in support of his appeal.

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."

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

1. On June [REDACTED] the applicant was arrested in [REDACTED] for driving while intoxicated.

2. On November [REDACTED], the applicant was arrested in [REDACTED] for driving while intoxicated.

In response to the notices issued on July 22, 2013 and September 23, 2013, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted the following:

- Certified court documents in Case no. [REDACTED] which indicates that on February [REDACTED] the applicant was adjudged guilty of driving while intoxicated, a violation of Texas Penal Code 49.04, a Class B. misdemeanor. The applicant was sentenced to serve 150 days in the [REDACTED] jail, ordered to pay a fine and was placed on probation for 24 months. On March [REDACTED] the court discharged the applicant from community supervised probation.
- Certified court documents in Case no. [REDACTED] which indicates that on April [REDACTED] the applicant was adjudged guilty of driving while intoxicated, a violation of Texas Penal Code 49.04, a Class B misdemeanor. The applicant was sentenced to serve 90 days in the [REDACTED] jail, ordered to pay a fine and court costs.

The applicant asserts that “the Judge reversed on [sic] of the conviction when he signs an order of discharge on the 2005 case. This matter was also explained before and it (re-registration application) was approved on 2007 or so.”

If the previous re-registration application was approved based on the same documentation that is currently contained in the applicant’s record, the approval would constitute material and gross error on the part of the director. We are not required to approve an application where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Contrary to the applicant’s assertion on appeal, he remains convicted of the misdemeanor offense in Case no. [REDACTED] as he was only discharged from probation in 2005; the conviction was not dismissed or vacated due to an underlying procedural defect in the merits of the case. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Mere compliance with the court’s orders does not alleviate the applicant of any convictions that had occurred nor dismisses or expunges any convictions.

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). Consequently, the director’s decision to withdraw TPS will be affirmed.

(b)(6)

NON-PRECEDENT DECISION

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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.