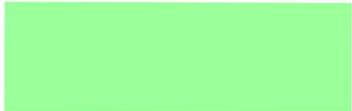




U.S. Citizenship
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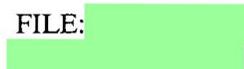


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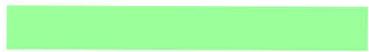
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

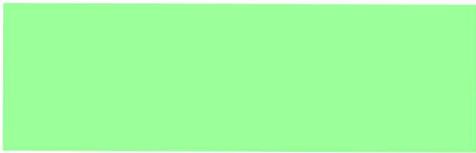
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) 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 November 18, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction as the Class B violation is not a criminal conviction. Counsel provides an affidavit from the applicant detailing the circumstances that led to his arrest. Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than nine months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

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 May [REDACTED], the applicant was arrested by the [REDACTED] Police Department (Texas) for driving while intoxicated, a violation of Texas Penal Code § 49.04(d), and fail to stop and give information, a violation of VCS 6701(d)(39)(2).

In response to the notice issued on July [REDACTED] which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted court documentation from the [REDACTED] District Court of Texas, which indicated that on August [REDACTED] the applicant pled guilty to driving while intoxicated (BAC \geq 0.15), a Class A misdemeanor, and failure to stop and give information, a Class B misdemeanor. For violating failure to stop and give information, the applicant was sentenced to serve three days in jail (credited with two days served) and ordered to pay court costs. Case no. [REDACTED] For violating driving while intoxicated, the applicant was sentenced to serve one year in jail, ordered to pay a fine and court costs and was placed on probation for 18 months. Case no. [REDACTED]

Texas Penal Code § 12.21 describes the punishment for a Class A Misdemeanor as confinement in jail for a term not to exceed one year and/or a fine not to exceed \$4,000. Texas Penal Code § 12.22 describes the punishment for a Class B Misdemeanor as confinement in jail for a term not to exceed 180 days and/or a fine not to exceed \$2,000.

As cited above, for immigration purposes, a felony is a crime “*punishable* by imprisonment for . . . more than one year, *regardless of the term . . . actually served.*” [Emphasis added.] The operative word is “punishable,” which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Texas law, not the specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of an offense punishable by up to 180 days incarceration, which meets the definition of a misdemeanor for immigration purposes. Consequently, the applicant remains convicted of the misdemeanor offense.

The applicant is ineligible for TPS due to his 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.