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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **AUG 06 2015**

[REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center, simultaneously withdrew the applicant's Temporary Protected Status and denied the re-registration application. 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. § 1254a. On March 10, 2014, the director withdrew TPS and denied the re-registration application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that he submitted sufficient documents as requested by the director. The applicant asserts that the criminal records relating to his 1994 and 1997 offenses have been destroyed, and the case relating to his arrest on [REDACTED] 2002 has been dismissed. The applicant submits additional evidence to support his assertions.

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. 8 C.F.R. § 244.1. 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. *Id.*

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.”

We conduct appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects the followings:

1. On [REDACTED] 1997, the [REDACTED] County General District Court for the Commonwealth of Virginia (arrest date [REDACTED] 1996) entered a nolle prosequi for the charge of impede a law enforcement officer in the discharge of his/her duties. On the same date, the applicant pled nolo contendere to and was adjudged guilty of assault and battery, a violation of Virginia Code § 18:2-57, a Class 1 misdemeanor, and the judge ordered some form of punishment and penalty. On [REDACTED] 1997, the applicant violated the court order and was ordered to pay a fine.

The director's finding that the applicant did not provide sufficient evidence of the sentence received for his conviction on [REDACTED] 1997, will be withdrawn. The applicant's nolo contendere plea to assault and battery is a misdemeanor conviction for immigration purposes, in accordance with section 101(a)(48)(A) of the Act.

2. On [REDACTED] 2012, in the [REDACTED] County General District Court for the Commonwealth of Virginia (summons date [REDACTED] 2012), the applicant pled guilty to and was adjudged guilty of no operator's license, a violation of Virginia Code § 46-2-300, a Class 2 misdemeanor. No sentence was received and the case was subsequently dismissed.

As the court documentation does not indicate that a judge had ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed, the applicant was not convicted of a misdemeanor within the meaning of section 101(a)(48)(A) of the Act for this offense.

3. The applicant indicated on his initial TPS application (filed May 22, 2001) and subsequent re-registration applications that he had been "arrested for driving without license in [REDACTED] county o/a 1994."

On appeal, the applicant submits documentation dated March 28, 2014, from the deputy clerk for the [REDACTED] County General District Court regarding a judgment/conviction date for no driver's license in 1994. The document indicates that the record no longer exists, as the case has been destroyed in compliance with existing laws relating to case destruction. Virginia Code § 16.1-69.57.

The applicant, in this case, was advised to submit the final dispositions for "all" arrests in a Request for Evidence dated April 18, 2003, which would have been within ten years after the date of his 1994 arrest. However, the applicant only provided court documents relating to his [REDACTED] 1996 arrest. The applicant has the burden to establish that the driving without a license offense was either dismissed or was in error. All required application forms must be properly completed and filed with any required initial evidence. The non-existence of required evidence creates a presumption of ineligibility and if required documents cannot be obtained, an applicant must



demonstrate this and submit secondary evidence pertinent to the facts at issue. *See* 8 C.F.R. §103.2(b)(2)(i), (ii). There has been no submission of secondary evidence concerning the applicant's 1994 arrest.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. §§ 103.2(b)(2)(i) and (ii) and 244.9(a). Consequently, the director's decision to withdraw TPS and deny the re-registration application will be affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.