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

(b)(6)

DATE: AUG 1 8 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. 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 November 21, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that the terroristic threat conviction of under the name does not relate to him and that the court clerk inadvertently included this documentation at the time he had obtained his court record. The applicant submits a certificate of disposition dated from the County District Clerk of Texas, indicating that the certificate is a true and correct re-statement of the summary electronic data of the records in the District Clerk's Office and a criminal search from 1976 to the present revealed only a drug arrest on for the applicant.

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).

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

There is no waiver available to an applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty (30) grams or less of marijuana. Section 244 (c)(2)(A)(iii)(II) of the Act, 8 U.S.C. § 1254a(c)(2)(A)(iii)(II).

Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *Id.*

Based on the evidence submitted on appeal, it is determined that the applicant has submitted sufficient credible evidence to overcome the director's finding that the terroristic threat conviction relates to the applicant. However, while the applicant is no longer ineligible for TPS

on the basis of having two misdemeanors, he remains inadmissible to the United States for having violated a law relating to a controlled substance.

The court documentation from the County Criminal Court for County, Texas indicates that on the applicant pled guilty to possession of marijuana "0-2 oz", a violation of section 481.121(b)(1) HSC. Based on this drug conviction, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act.

In a notice of intent to deny issued by the director on August 20, 2013, the applicant was advised to provide a police report or court documentation that states, in grams, the amount of marijuana involved for any charges involving possession of marijuana. The applicant did not provide the requested documentation from either the police department or the court.

In a notice of intent to dismiss the appeal dated June 12, 2015, we afforded the applicant an opportunity to submit certified documentation from the arresting agency or the certified complaint/indictment from the County Criminal Court for County, Texas, with a detailed account of the exact quantity of marijuana that was in his possession at the time of his arrest on The applicant was granted thirty (30) days to submit the requested documentation. The applicant did not respond to our notice.

Accordingly, the applicant has failed to demonstrate that he is eligible for a waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act and remains inadmissible to the United States for having violated a law relating to a controlled substance. Consequently, the director's decision to withdraw TPS will not be disturbed.

The burden of proof in application proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is dismissed.