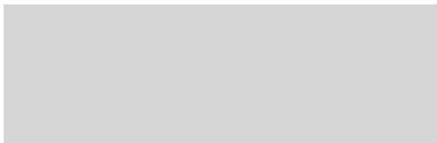




U.S. Citizenship
and Immigration
Services

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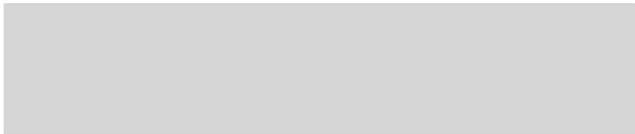
DATE: **AUG 18 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [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:



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 Director, Vermont Service Center, denied the application. 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. § 1254a. On September 29, 2014, the director denied the application because it was determined that the applicant had been convicted of two misdemeanors in the United States. The director also denied the application due to the applicant's failure to establish eligibility for late registration.

On appeal, counsel asserts that the director's decision is in error, as the applicant does not have two misdemeanor convictions. Counsel contends that the court granted the applicant's motion to reduce her [REDACTED] misdemeanor conviction to an infraction.

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. 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.

The first issue to be addressed is the applicant's criminal history.

The record contains the following from the [REDACTED] Superior Court of California:

1. Court documentation indicating on [REDACTED] the applicant was charged with a misdemeanor offense of petty theft with prior(s) (§ 484/666 PC) and grand theft (§ 487(a) PC). On [REDACTED] the complaint was amended to add a misdemeanor offense of petty theft (§ 484 PC). On [REDACTED] the applicant pled nolo contendere to a misdemeanor offense of petty theft. The applicant was ordered to serve one day in jail, pay a fine, court costs, and was placed on probation for three years. The remaining charges were dismissed. On July 19, 2012, the applicant filed a motion to reduce the misdemeanor to an infraction. On

August 13, 2012, the court granted the applicant's motion and reclassified the misdemeanor as an infraction pursuant to § 17(d)(1-2) PC.

Because the reclassification was issued pursuant to § 17(d) PC, the court's decision is entitled to full faith and credit in immigration proceedings. *Garcia-Lopez v. Ashcroft*, 334 F. 3d 840 (9th Cir. 2003); *In re Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005). Therefore, the director's finding that the applicant has been convicted of a petty theft misdemeanor offense on October 3, 2003 will be withdrawn.

2. Court documentation indicating on [REDACTED] the applicant was charged with misdemeanor offenses of grand theft (§ 487(a) PC), burglary (§ 459 PC), and false identification to police officer (§ 148.9 PC). On [REDACTED] the applicant pled nolo contendere to and was convicted of a misdemeanor offense of grand theft. The applicant was ordered to serve one day in jail, pay a fine, court costs and was placed on probation for two years. The remaining charges were dismissed.

In a Request for Evidence dated April 8, 2014, the applicant was requested to submit the final court dispositions for all arrests. Along with the above court documents, counsel submitted a copy of a prisoner receipt referencing an arrest on [REDACTED] for grand theft. Counsel asserted that his office had been informed by the Superior Court, the District Attorney's Office and the Police Department of [REDACTED] that no case exists with the court following that arrest, but did not provide supporting evidence. The record contains a document from Superior Court of California, County of [REDACTED] concerning a search for records, but does not reference the applicant's booking number for the arrest. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the applicant has failed to provide the certified documentation relating to the final disposition of her arrest by the [REDACTED] Police Department for grand theft on [REDACTED] the applicant will remain ineligible for TPS due to the failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

The second issue to be addressed is the applicant's failure to establish eligibility for late registration.

To meet the initial registration requirements in 8 C.F.R. § 244.2(f)(1), Salvadoran applicants must have filed TPS applications during the initial registration period, March 9, 2001 through September 9, 2002. If applicants did not file their initial TPS applications during this time period, to qualify for TPS they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2) or (g). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period (March 9, 2001 through September 9, 2002) the applicant fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or

application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The record reflects that the applicant previously filed an initial TPS application on April 2, 2001, which was approved on January 15, 2004. On May 8, 2006, TPS was withdrawn as the applicant failed to submit requested court documentation relating to her criminal record. No appeal or motion was filed from the decision withdrawing TPS.

Counsel, on appeal, contends that the applicant is eligible for late registration because she was in valid temporary protected status during the initial registration period.

However, having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). The provisions for late registration described in 8 C.F.R. § 244.2(f)(2) were created in order to ensure that TPS benefits were made available to individuals who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant, on appeal, has not submitted any evidence that she has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground 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.