



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 31 2015**

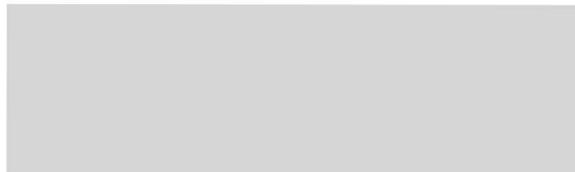
FILE: 

APPLICATION RECEIPT: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the decision and the matter is now before the Administrative Appeals Office (AAO). 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 June 20, 2014, the Director withdrew TPS and denied the re-registration application, finding the applicant was ineligible due to his two misdemeanor convictions.

On appeal the applicant, through counsel, asserts that he is seeking to vacate one of the applicant's convictions because it is illegal due to errors by the plea attorney and plea judge during the 2005 proceedings.

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 record reflects that on April 11, 2005, the applicant pled guilty to violating section 24(2) of chapter 90 of the Massachusetts Code, driving under the influence with .08% or more alcohol in

the blood, a misdemeanor. The court ordered the applicant to a year of probation and to pay a fine of \$250.

The record also contains documentation from the [REDACTED] District Court, which indicates that on September 18, 2012, the applicant pled guilty to violating section 24(1)(a)(1) of chapter 90 of the Massachusetts Code, driving under the influence, second offense, a misdemeanor. The court ordered the applicant to pay a fine and attend a second-offenders program.

On appeal the applicant, through counsel, asserts that he intends to obtain a court order vacating his first conviction. Counsel provides documentation reflecting the matter before the Trial Court of Massachusetts, [REDACTED] District Court, was continued to November 17, 2014. Counsel states that he intends to provide a certified disposition after the November hearing. The record, however, does not include communication from counsel after his correspondence dated October 20, 2014. The record, therefore, is considered complete as of the date of this decision.

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 and deny the re-registration application will be affirmed.

An alien applying for TPS has the burden of proving that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has not met this burden.

ORDER: The appeal is dismissed.