



U.S. Citizenship
and Immigration
Services

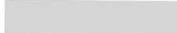
(b)(6)



DATE:

JUL 15 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:

NO REPRESENTATIVE OF RECORD

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, withdrew the applicant's Temporary Protected Status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

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 21, 2013, the acting center director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that at the time of his court proceedings for his driving while intoxicated violation, his attorney failed to adequately represent him. The applicant asserts that a petition for a writ of habeas corpus has been filed based on ineffective assistance of counsel and that a subsequent appeal has been filed based on the court's decision of December 5, 2013 denying the writ. The applicant states that he is aggressively pursuing the reversal of the court's decision rendered against him. The applicant submits court documents relating to writ and appeal.

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. 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.

The record contains the following information relating to the applicant's criminal history:

¹ On March 10, 2014, the director issued a notice terminating this appeal filed by the applicant on July 19, 2013. As the appeal lies within the jurisdiction of the AAO, the termination will be withdrawn and the appeal will be considered on its merits.

1. On [REDACTED] 2004, the applicant was arrested by the [REDACTED] Police Department (Texas) for driving while intoxicated. On [REDACTED] 2005, in the County Criminal Court for [REDACTED] Texas, the applicant pled guilty to driving while intoxicated, a Class A misdemeanor. On [REDACTED] 2005, the applicant was sentenced to serve ten days in jail, and ordered to pay court costs.
2. On [REDACTED], 2011, the applicant was arrested by the Sheriff's Office, [REDACTED] Texas and charged with driving while intoxicated, violation of Texas Penal Code 49.09(a). On [REDACTED] 2011, in the County Criminal Court for [REDACTED] Texas, the applicant pled guilty to driving while intoxicated, a Class A misdemeanor. The applicant was sentenced to serve one year in jail, ordered to pay a fine and court costs and placed on community supervision for two years.

On appeal, the applicant provides a copy of a Notice of Appeal to the Court of Appeals of the State of Texas relating to the presiding judge's decision of December 5, 2013 in a writ of habeas corpus. Although the applicant did not submit the December 5, 2013 decision, the fact that the applicant has filed an appeal based on the findings of fact and conclusions of law of this decision indicates that the writ was denied.

The applicant's statements made on appeal have been considered. However, we will not hold a proceeding in abeyance while an individual attempts to seek post-conviction relief. Furthermore, to date, the applicant has not presented any documentation indicating that post-conviction relief has been granted.

The court dispositions reflect that the applicant pled guilty to each charge and the judge ordered some form of penalty, punishment and/or restraint on the applicant's liberty to each charge. Therefore, the applicant has been convicted of each offense within the meaning of section 101(a)(48)(A) of the Act.

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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the acting center director's decision to withdraw TPS 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.