



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUN 05 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:

[Redacted]

INSTRUCTIONS:

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](http://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,

for Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn, and the re-registration denied, by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period which was subsequently approved. On March 27, 2014, the director withdrew TPS, and denied the re-registration application, after determining that the applicant had failed to provide requested final court dispositions his 1992 arrest for driving under the influence. The applicant submitted a final court disposition for a [REDACTED] 2009 arrest which shows a misdemeanor conviction on [REDACTED] 2009 for driving under the influence; however, the applicant did not provide the final court disposition for the 1992 arrest, but indicated that he was arrested in the beginning of 1992 for driving under the influence, was detained for six hours, placed on probation for 36 months and ordered to complete 179 hours of community service and fined \$390.

On appeal, the applicant states that "the applicant was unaware that he was to re-issue the court disposition involving his 1992 arrest;" and that "the 1992 arrest appears to have not been an actual conviction as the applicant was given 'imposition of sentence suspended' in lieu of a guilty plea." In support, counsel submits a page from the [REDACTED] Judicial District, of a final court disposition for the 1992 arrest, a [REDACTED] 1992, Court Order to Report for Financial Evaluation, a Court Referral Community Service Program Referral Form; and a Court Order Settling Fee for Payment of Legal Assistance, dated [REDACTED] 1992.

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 244(c)(2)(B)(i) of the Act provides that an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States.

"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.

Under section 101(a)(48) of the Act:

(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

(B) 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 AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

The issue in this proceeding is whether the applicant was convicted in 1992 for driving under the influence, and therefore has two misdemeanor convictions. The applicant does not dispute that he has at least one misdemeanor conviction, a misdemeanor conviction on [REDACTED] 2009 for driving under the influence. The applicant contends, however, that the evidence establishes that the applicant is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act, as he does not have a felony conviction or two misdemeanor convictions.

The documents provided pertaining to the applicant's 1992 arrest consists of:

- 1) A page from the [REDACTED] Judicial District, of a final court disposition for the 1992 arrest;
- 2) A [REDACTED] 1992, Court Order to Report for Financial Evaluation;
- 3) A Court Referral Community Service Program Referral Form; and,
- 4) A Court Order Settling Fee for Payment of Legal Assistance, dated [REDACTED] 1992.

Whether these documents represent all the available criminal records related to the applicant's 1992 arrest is unclear, but we are not persuaded that it is the complete record, as documentation of actions – such as the charge(s), plea(s) and judgment – occurring prior to sentencing are not in the record. Therefore, we affirm the director's finding that the applicant has not submitted a complete disposition. Additionally, the documents submitted support the conclusion that the applicant was convicted. Sentencing generally follows pleading and judgment, and the record reflects that the applicant was sentenced, and that punishments were imposed on the applicant beyond the suspended sentence, including probation for 36 months; to either serve time in jail, pay fines, or complete community service; restitution payments; restrictions on the applicant's driver's license; and the requirement to enroll in and complete an alcohol education program. Nowhere in the one-page court document provided is there reference to action "in lieu of guilty plea," as asserted.

---

<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Without the complete court disposition record for the applicant's 1992 arrest, we cannot determine whether the applicant has been convicted of the offense(s) charged, but to the extent the applicant has submitted the criminal record, it supports the conclusion that the applicant was convicted of driving under the influence. Consequently, we will not disturb the director's decision to deny the re-registration application and withdraw TPS.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.