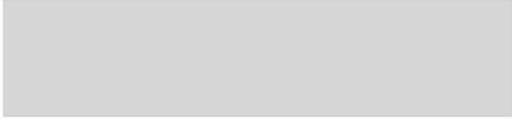




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 11 2015 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]
I-290E

IN RE:

Applicant: [REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 March 2014, the director withdrew TPS because it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that he only has one misdemeanor conviction as his initial driving under the influence offense was dismissed upon the successful completion of a diversion agreement. The applicant states that there was no guilty plea, admission of sufficient fact to warrant a finding of guilt or a formal judgment of guilt entered by the court relating to his initial driving under the influence offense.

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. 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 record reflects the following:

1. On [REDACTED] 2005, the applicant was arrested by the [REDACTED] Police Department for driving under the influence of alcohol or drugs, a misdemeanor. On June 15, 2006, in the [REDACTED] Municipal Court of Kansas, prosecution was deferred for 12 months and the applicant entered into a DUI Diversion Agreement with the prosecution. In accordance with the agreement, the applicant was ordered to pay a fine and court costs, perform 20 hours of community service, complete a drug and/or alcohol treatment program and attend 12 AA meetings. The applicant successfully completed the diversion program and on September 6, 2007, the case was dismissed.
2. On [REDACTED] 2011, the applicant was arrested by the Highway Patrol, [REDACTED] Missouri for driving while intoxicated, a violation of RSMo § 577.010. On [REDACTED]

January 3, 2012, in the [REDACTED] Circuit Court, the applicant pled guilty to this Class B misdemeanor. The applicant was sentenced to serve 30 days in jail which was suspended. The remaining misdemeanor offense, failure to drive on the right half of the roadway, was dismissed.

The director determined that the applicant had admitted guilt to the driving under the influence offense of [REDACTED], 2005, was sentenced by the court and subsequently withdrew the applicant's TPS due to his two misdemeanor convictions.

On appeal, the applicant resubmits copies of the [REDACTED] 2005 traffic citation and the DUI Diversion Agreement. The applicant also submits a letter dated March 31, 2014, from the court administrator of the City of [REDACTED] Municipal Court who indicates that the DUI Diversion Agreement was dismissed after deferred adjudication on September 7, 2007, and that "[t]he Order of Dismissal was either not scanned into the archives or was not done by court staff but the case shows that it was dismissed and the case is closed in the computer."

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.

Pursuant to K.S.A. § 12-4417, no defendant shall be required to enter any plea to a criminal charge as a condition for diversion. The director determined that the applicant admitted sufficient facts to warrant a finding of guilt in his [REDACTED] 2005 arrest. However, the diversion program agreement indicates that its terms were set by the prosecution rather than the court, so there is no indication that a judge in this matter ordered some form of punishment, penalty or restraint on the applicant's liberty. Consequently, the final judgment in this case does not meet the definition of a conviction as described in section 101(a)(48)(A) of the Act.

Accordingly, the evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the re-registration application and to withdraw TPS will be withdrawn and the applicant's TPS will be reinstated.

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 been met.

ORDER: The appeal is sustained and TPS is reinstated.