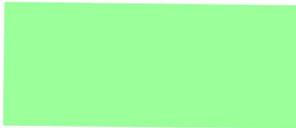




U.S. Citizenship  
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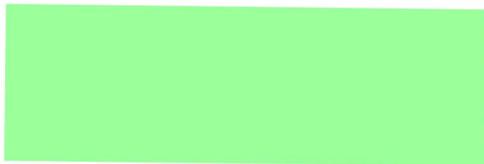


DATE: **MAR 20 2015** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE:

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. 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Center Director, Vermont Service Center denied the application for Temporary Protected Status (TPS) re-registration and 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 is seeking TPS re-registration under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. The Acting Center Director denied the re-registration application and withdrew TPS, as the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel for the applicant asserts that the applicant did not commit two misdemeanors within the meaning of section 244.4(a) of the Act, as the applicant's crimes took place at one time so that she could not disassociate herself from the activity that occurred in a single criminal episode.

In support of the application and appeal, the applicant submitted legal documents, prior applications, affidavits concerning her birth, identity documents and a statement from the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 contains court documents indicating that the applicant was convicted of driving while her privilege to do so was revoked and no proof of insurance on [REDACTED], 2011 in the City Court of

Tennessee. The applicant was sentenced to six months and a fine on the first charge and thirty days and a fine on the second.

Counsel for the applicant asserts that the applicant did not commit two misdemeanors within the meaning of section 244.4(a), if viewed through the case law involving two crimes of moral turpitude under section 237(a)(2)(A)(ii) of the Act. Counsel cites detailed facts from case law in which respondents engage in criminal behavior over a span of time, either on multiple occasions or after the first crime is completed. *Matter of Adetiba*, I&N Dec. 506 (BIA 1992); *Nguyen v. INS*, 991 F.2d 621 (10th Cir. 1993); *Matter of J*, 61 I&N Dec. 382 (BIA 1954); *Matter of Vosgianian*, 12 I&N Dec. 1 (BIA 1966). Counsel asserts that, in contrast to these respondents, the applicant was involved in a single driving incident and committed criminal offenses within the performance of this single act. However, as noted by counsel, the cited cases all involve deportability based on convictions for two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, under current section 237(a)(2)(A)(ii) of the Act. It is further noted that section 237(a)(2)(A)(ii) of the Act, unlike section 244.4(a), contains “not arising out of a single scheme of criminal misconduct,” in its statutory language.

The fact that the applicant’s crimes arose in a single incident does not preclude her from being found ineligible for TPS for her two misdemeanor convictions. The determination of whether the applicant’s crimes arose out of a single scheme of criminal misconduct is relevant when applying other sections of the Act, such as section 237(a)(2)(A)(ii), but has no bearing on the applicant’s eligibility under section 244 of the Act. Counsel acknowledges that there is no direct case law holding that the applicant’s two misdemeanors should be viewed as a single criminal incident.

The applicant is ineligible for TPS due to her two misdemeanor convictions, pursuant to 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 Service Director's decision to deny the application for this reason will be affirmed.

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.