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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

DATE: **MAY 13 2015** Office: VERMONT SERVICE CENTER [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 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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Acting Director, Vermont Service Center.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 February 28, 2014, the acting director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court disposition.

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.

§ 101(a)(48)(A) of the Act states:

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.

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."

On November 22, 2013, the acting director issued a notice requesting that the applicant provide certified judgment and conviction documents from the courts for any arrests, including his arrest on May 22, 2012 by the Sheriff's Office in [REDACTED] California for driving under the influence. The applicant, however, failed to respond to the notice. The acting director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew TPS.

On appeal, counsel submits a declaration from the applicant contesting the acting director's finding that he was arrested on May 22, 2012. The applicant asserts that on May 22, 2012, he went to the work alternative program to comply with the commitment and during the registration process his fingerprints and photographs were taken by the [REDACTED] County Sheriff Department. Counsel also submits:

- Certified court documents from the [REDACTED] County Superior Court of California, which indicate that on August 28, 2011, the applicant was arrested and subsequently charged with driving under the influence (DUI), driving with .08% or more alcohol in the blood and threatening public officers and employees. On April 13, 2012, the applicant pled no contest to violating section 23152(a) California Vehicular Code, driving while under the influence of alcohol/drugs, a misdemeanor. The applicant was sentenced to serve 15 days in the county jail, to participate in a work alternative program, and to attend a DUI school. The remaining charges were dismissed.
- A copy of the applicant's work schedule contract from the [REDACTED] County Detention Facilities, which indicates that the work alternative program started May 22, 2012 and ended June 17, 2012.

The applicant has submitted sufficient documentation establishing that the arrest of August 28, 2011 and his appearance on May 22, 2012 before the Sheriff's Office in [REDACTED] California relate. The applicant has overcome the single deficiency outlined in the acting director's decision. The applicant has one misdemeanor conviction, which 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 acting director's decision to withdraw the applicant's TPS will be withdrawn, and the applicant's TPS will be reinstated.

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 met this burden.

**ORDER:** The appeal is sustained.