



U.S. Citizenship  
and Immigration  
Services

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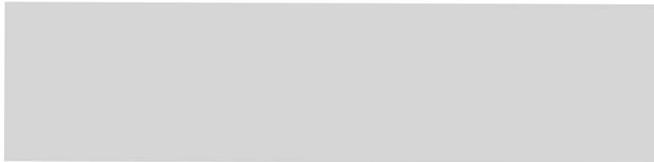
Date: **MAY 14 2015** Office: VERMONT SERVICE CENTER

FILE:

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:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Acting Center Director, Vermont Service Center. The applicant has appealed the decision and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 October 28, 2013, the Acting Center Director withdrew TPS and denied the re-registration application because the applicant was convicted of two or more misdemeanors committed in the United States. *See Decision of the Acting Center Director*, dated October 28, 2013.

On appeal, the applicant contends that he only has one misdemeanor offense on his record, and that under New York State law, the applicant's 2013 arrest and conviction "was graduated from how the charge on its face would normally be disposed because of statutes aggravating the charge when similar violations of law occur within a certain period."

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. 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.

The record indicates that on [REDACTED] 2005, the applicant was arrested and charged with operating a motor vehicle while under the influence of alcohol or drugs under the New York Vehicle and Traffic Law, § 1192.2. On [REDACTED] 2006, the applicant pled guilty to the charge, was fined \$500, had his license revoked for six months, and received a sentence of probation for three years.

On [REDACTED] the applicant was again arrested and charged with operating a motor vehicle while under the influence of alcohol or drugs under the New York Vehicle and Traffic Law, §

1192.2. The applicant was convicted of the charge on [REDACTED] 2013. On [REDACTED] 2013, the applicant was fined \$1,000, was required to have an ignition interlock device for three years, had his license revoked for six months, and received a sentence of probation for three years

Based on the foregoing record, the director determined that the applicant was ineligible for TPS under section 244(c)(2)(B)(i) of the Act.

The record further indicates that the applicant was arrested in 1999 for operating a motor vehicle under the influence of alcohol or drugs, and the charge was reduced to operating a vehicle while ability impaired by alcohol. The applicant's conviction for driving while ability impaired under the New York Vehicle and Traffic Law, § 1192.1 is considered to be an infraction of the law, rather than a misdemeanor.

On appeal, counsel asserts that the applicant had criminal charges in 1999 and again in 2005 and 2013 which arose from respective single common events. Counsel notes that the applicant's DWI in 1999 was disposed as an infraction, and contends that this leaves but one misdemeanor on his record. Counsel contends that "under New York State law, the 2013 arrest and conviction was graduated from how the charge on its face would normally be disposed because of statutes aggravating the charge when similar violations of law occur within a certain period." It is noted that the applicant's 2013 conviction is pursuant to the same section of law, New York Vehicle and Traffic Law § 1192.2, as his 2006 conviction, so there is no indication that his 2013 conviction was aggravated based on previous violations. Further, 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.

The record indicates that the applicant was convicted of operating a motor vehicle while under the influence of alcohol or drugs under the New York Vehicle and Traffic Law, § 1192.2 on two separate occasions, on [REDACTED], 2006 and again on [REDACTED] 2013.

Accordingly, the applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the Acting Center Director's decision to withdraw TPS and deny the re-registration application 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.