

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



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAY 20 2015 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]
I-290B: [REDACTED]

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:

Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be remanded.

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. § 1254. On December 19, 2013, the director withdrew TPS because the applicant had not submitted requested court documentation relating to his criminal record.

On appeal, the applicant provides the requested court documentation.

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.

The Federal Bureau of Investigation report reflects that on [REDACTED] 2012, the applicant was arrested by the [REDACTED] New Jersey Police Department for shoplifting.

On August 16, 2014, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests. The applicant, however, did not respond to this notice.

On appeal, the applicant submits certified court documentation dated December 19, 2013, from the Municipal Court, [REDACTED] County, New Jersey, which indicates that on or about [REDACTED] 2012, the applicant was charged with shoplifting in violation of N.J.S. 2C:20-11(b)(2). On [REDACTED] 2012, the applicant was adjudged guilty of disorderly conduct in violation of Municipal Ordinance 3-10. The applicant was ordered to pay a fine and court costs.

As discussed above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. New Jersey law provides that a violation of its municipal ordinances is punishable by up to 90 days incarceration. N.J.S.A. 40:49-5. Therefore, the applicant's disorderly conduct conviction qualifies as a misdemeanor for immigration purposes.



The applicant has overcome the single deficiency outlined in the 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 director's decision to withdraw the applicant's TPS on this ground will be withdrawn.

The validity period of the applicant's fingerprint check, however, has expired. Accordingly, the case will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse to the applicant, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i). Furthermore, that adverse decision will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a decision.