



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 21 2015**

FILE: [Redacted]
APPLICATION RECEIPT #: [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:
[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On March 27, 2013, the director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction for driving under the influence from [REDACTED], and the applicant has provided sufficient evidence from the [REDACTED] County Court indicating no convictions for the other arrests under his name, occurring on [REDACTED] and [REDACTED].

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 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 AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains the following:

1. Certified court documentation from the State of Minnesota District Court, [REDACTED] Judicial District, indicating that on [REDACTED] the applicant violated Minn. Stat. 168.10(3), display revoked license plates, a misdemeanor. On [REDACTED] a complaint was filed, and on [REDACTED] the applicant was ordered to pay a fine and court costs.
2. Certified court documentation which lists the violations committed by the applicant on [REDACTED]. On [REDACTED] the applicant pled guilty to driving while impaired – ohm/orv alcohol content 0.08% or more, a violation of Minn. Stat. 169A-20(1c)(5), a misdemeanor. The applicant was placed on probation for one year and ordered to pay a fine and court costs.

Minnesota law defines a “misdemeanor” as a crime for which a sentence of not more than 90 days or a fine of not more than \$700, or both, may be imposed. Minn. Stat. 609.02(3). Minn. Stat. 168.10(4) provides that it is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other laws of this state declared to be a felony or gross misdemeanor.

Though the applicant was sentenced to a fine and court costs for displaying revoked license plate, the offense qualifies as a "misdemeanor" for immigration purposes. The regulation states that a misdemeanor is a crime “punishable by imprisonment for . . . one year or less, regardless of the term . . . actually served.” Likewise, the regulation states that a criminal violation will not be considered a misdemeanor only if it is “punishable by imprisonment for a maximum term of five days or less.” As such, a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Minnesota law, not the specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of an offense punishable by up to 90 days incarceration, which meets the definition of a misdemeanor for immigration purposes. Therefore, the applicant’s conviction for displaying revoked license plates, along with his conviction for driving while impaired, qualify as misdemeanors as defined for immigration purposes in 8 C.F.R. § 244.1. As such, the applicant is ineligible for TPS due to his two misdemeanor convictions.

It is noted that director’s decision also mentioned an arrest on [REDACTED] for driving without a valid license and giving false information to police officer. We concur with the director’s finding that the applicant has provided sufficient credible evidence from the [REDACTED] County District Court indicating that this arrest relates to another individual.

Further, the record contains additional arrests that have not been resolved on appeal.

- On [REDACTED] the applicant was arrested by the [REDACTED] Police Department for driving while impaired, driving while impaired – alcohol content

0.10% or more and a driver's license violation. On [REDACTED], the applicant was arrested under warrant by the [REDACTED] Police Department. The warrant relates to the applicant's [REDACTED] arrest for driving while impaired.

On March 6, 2007, January 11, 2011 and May 11, 2012, the director issued a notice requesting that the applicant provide certified judgment and conviction documents from the courts for all arrests including the arrests on [REDACTED] and [REDACTED].

In response to the notice of March 6, 2007 and January 11, 2011, the applicant submitted certified court documents relating to the applicant's convictions noted above. The applicant also submitted: a) Criminal History Search Results dated [REDACTED] from the State of Minnesota District Court, [REDACTED] Judicial District, which searched cases processed only in [REDACTED] County and provided the court documents regarding the applicant's conviction on [REDACTED] for display revoked license plates; 2) certified court documentation relating to two petty misdemeanor offenses¹; 3) a certified Criminal/Traffic/Petty Case Record Search Results listing two criminal records: Case no. [REDACTED] and Case no. [REDACTED]; and 4) a letter notarized January 18, 2011, from the City of [REDACTED] Police Department listing the applicant's [REDACTED] arrest.

In response to the notice of May 11, 2012, the applicant indicated that the arrests of [REDACTED], [REDACTED] and [REDACTED] did not belong to him, as he was never arrested in [REDACTED] and [REDACTED]. The applicant stated, "In 1999 I lost my wallet and it is possible that someone was using my identity and was arrested in [REDACTED] and [REDACTED]." The applicant submitted a certified Criminal History Search Results dated [REDACTED], from the State of Minnesota District Court, [REDACTED] Judicial District, which indicates that the criminal history search included cases processed only in [REDACTED] County and that no record was found under the applicant's name. The applicant also submitted a Verified Report dated [REDACTED] from [REDACTED], a subsidiary of [REDACTED] which indicated that no criminal conviction records were found in [REDACTED] County under the names [REDACTED] and [REDACTED]. The document from [REDACTED] has limited probative value as it was not issued by a court or law enforcement agency.

On November 1, 2012, the director issued a notice advising the applicant that no documentation had been submitted to corroborate his statement that the arrests on [REDACTED] and [REDACTED], [REDACTED] did not relate to him. In this notice, the applicant's certified judgment and conviction documents from the courts were requested for all arrests. In response, the applicant submitted a letter dated November 26, 2012, from the [REDACTED] County Sheriff's Office indicating that its office has no record of arrests in [REDACTED] County/City of [REDACTED] under the applicant's name.

On appeal, counsel asserts that the arrests on [REDACTED] and [REDACTED] do not relate to the applicant. The documents from the State of Minnesota District Court, [REDACTED] Judicial

¹ A "petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed. Minn. Stat. 609.02(4a) (2007).

District and the [REDACTED] County Sheriff's Office, however, are insufficient to overcome the director's finding, as they only cover [REDACTED] County. The applicant's rap sheet reflects that the arrests on [REDACTED] and [REDACTED] are associated with the same controlling agencies and further indicates that the arrest of [REDACTED] is under the jurisdiction of [REDACTED] District Court-[REDACTED]. Accordingly, the applicant has not submitted certified documentation from the appropriate jurisdiction to refute his assertion that these arrests do not relate to him. As such, he has not satisfied his burden to establish, with affirmative evidence, that the outstanding charges were dismissed or in error.

The applicant is ineligible for TPS due to his two misdemeanor convictions on [REDACTED], [REDACTED] and [REDACTED]. 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. The applicant has further failed to provide sufficient evidence of the final court dispositions of his arrests on [REDACTED] and [REDACTED]. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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 not been met.

ORDER: The appeal is dismissed.