



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 27 2015**

FILE: 

APPLICATION RECEIPT #: 

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:

NO REPRESENTATIVE OF RECORD

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS). 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. § 1254a. On March 6, 2014, the director withdrew TPS because the applicant has been convicted of two misdemeanor offenses in the United States which rendered him ineligible for TPS.

On appeal, the applicant asserts that he was arrested and charged with only one incident of driving under the influence (DUI) of alcohol or drugs. The applicant submits copies of court dispositions for all arrests and convictions.

An alien shall not be eligible for TPS 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 reflects the applicant was arrested on three occasions from 2008 to 2011 in California, and based on the applicant's arrest record, on February 3, 2011, the director issued a Notice of Intent to Deny (NOID) the applicant's re-registration for TPS and to withdraw TPS because he failed to provide all of the initial and/or additional documentation required to process his application. The director requested that the applicant submit certified copies of judgment and conviction documents from the court(s) for all his arrests. The applicant submitted the requested documents.

Based on the documents submitted, the director determined that the applicant had been convicted of two misdemeanor offenses in the United States. The director denied the TPS re-registration and withdrew his TPS status in accordance with 8 C.F.R. § 244.14(a)(3).

On appeal, the applicant asserts that charges from a [REDACTED] 2008 arrest were dismissed without any criminal proceeding against him. The applicant does not contest that he has a misdemeanor conviction stemming from his arrest on [REDACTED], 2008. The applicant, however, disputes the director's finding that he was arrested for a DUI on [REDACTED] 2011 and another DUI on [REDACTED] 2011 and states that there was only one arrest in [REDACTED] 2011 for which he appeared in court in [REDACTED] 2011. The applicant submits certified court dispositions for all three arrests.

The record indicates that the applicant was convicted in the Superior Court of California, [REDACTED] upon a plea of no contest to breaking or removing vehicle parts, a misdemeanor, in violation of California Vehicle Code (CAL. VEH. CODE) section 10852. The court sentenced the applicant to a Conditional Sentence of 36 months, 6 days in jail, and a fine of \$130.00. Court records also show that the applicant was convicted in the Superior Court, [REDACTED] upon a plea of no contest to DUI with blood alcohol content of 0.08 percent or higher, a misdemeanor, in violation of CAL. VEH. CODE section 23152(B). The applicant was placed on probation for 3 years, sentenced to 4 days in jail and ordered to pay fines and other fees of \$1611.00.

Therefore, based on the evidence of record, the applicant has been convicted of two misdemeanors committed in the United States, which renders him ineligible for TPS in the United States.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS on the basis of the applicant's criminal convictions in the United States will be affirmed.

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.