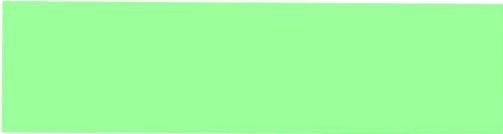




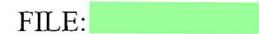
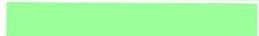
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 25 2013

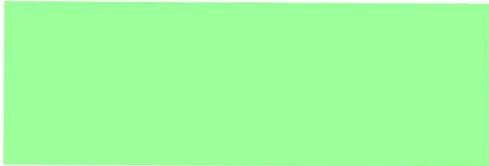
Office: VERMONT SERVICE CENTER

FILE:   


IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

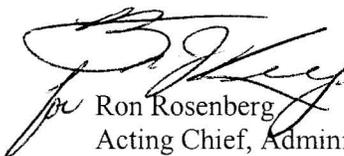


INSTRUCTIONS:

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  
Acting 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because he failed to submit requested court documentation relating to his criminal record. The director also withdrew the applicant's TPS because the applicant had not remained continuously physically present in the United States from the date he was first granted TPS as required by 8 C.F.R. 244.14(a)(2).

On appeal, counsel asserts neither the applicant nor his attorney received notice of February 28, 2012. Counsel states that the applicant has one misdemeanor conviction and that his brief departure from the United States did not break his continuous physical presence.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

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."

After the grant of TPS, the alien must remain continuously physically present in the United States under the provisions of section 244(c)(3)(B) of the Act. The grant of TPS shall not constitute permission to travel abroad. Permission to travel may be granted by the director pursuant to U.S. Citizenship and Immigration Services (USCIS) advance parole provisions. 8 C.F.R. § 244.15(a).

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section. The term brief, casual and innocent absence, means a departure from the United States in which each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The first issue to be addressed is the applicant's criminal history.

On August 18, 2010, the applicant was requested to provide certified judgment and conviction documents from the courts for his arrests on November 15, 2008 for driving while intoxicated in [REDACTED] Texas, and on March 6, 2009 for driving under the influence of alcohol in [REDACTED] Oklahoma. The applicant, in response, submitted:

- Certified court documentation dated September 16, 2010 from the County Clerk of [REDACTED] Texas, indicating that the applicant's case [REDACTED] for driving while intoxicated on March 6, 2009 was active and that no court date had been set at this time.
- Certified court documentation from the District Court of [REDACTED] Oklahoma, which indicates that on November 19, 2009 the applicant pled guilty to driving under the influence of intoxicating liquor. Adjudication of guilt was deferred for two years. The applicant was ordered to pay a fine and court costs. Case no. [REDACTED].

The record contains a notice dated February 28, 2012,<sup>1</sup> requesting the applicant to provide certified judgment and conviction documents from the courts for his arrests on November 15, 2008 for driving while intoxicated in [REDACTED] Texas and on March 6, 2009 in [REDACTED] Oklahoma.

The AAO concludes that it was not necessary for the director to request the court disposition for the applicant's arrest in Oklahoma as he had previously provided certified court documents reflecting a misdemeanor conviction. The director was correct in asking for the final disposition for the applicant's arrest in Texas as 18 months had elapsed since the last request.

On appeal, counsel resubmits copies of the court documents provided in response to the notice of August 18, 2010.

Counsel asserts that she did not have ample time to obtain new certified copies of the criminal documents, "but if the case is remanded we can provide those to the Service." This assertion is not persuasive as counsel indicated on the appeal form that a brief and/or additional evidence would be submitted within 30 days. Counsel supplemented her appeal with only a brief. Further, more than a year later, the new certified copies of the criminal documents have not been provided. Therefore, it is unknown to USCIS if the case for driving while intoxicated is still active.

The applicant has the burden to establish, with affirmative evidence, that an outstanding charge has been dismissed or was in error. The applicant is therefore ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS on this ground will be affirmed.

The second issue to be addressed is whether the applicant has maintained continuous physical presence in the United States. The record reflects that the applicant departed the United States without receiving permission to travel abroad prior to his departure.

The record of proceeding contains the Form I-213, Record of Deportable/Inadmissible Alien, reflecting that on March 6, 2010, the applicant was apprehended near Brownsville, Texas, subsequent to his entry into the United States without inspection. A Form I-200, Warrant for Arrest, and a Form I-862, a Notice to Appear, were issued on March 27, 2010. The Form I-862; however, was subsequently cancelled in the interest of justice. 8 C.F.R. § 239.2(a)(7).

Counsel states that the applicant was released by the U.S. Border Patrol "after discovering that he briefly left for the United States for Honduras by land through Mexico but quickly returned while suffering from mental instability caused by his bipolar disorder."

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<sup>1</sup> The notice was addressed to [REDACTED] at [REDACTED] Oklahoma City, Oklahoma 73109. The record does not contain any evidence that the notice was returned by the U.S. Postal Service as undeliverable

Counsel's assertion however, is not supported by the record. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). At the time of his apprehension, the applicant indicated that he departed the United States on February 14, 2010. The applicant has not provided a plausible explanation for his 40 day-absence from the United States. Consequently, the director's decision to withdraw TPS on this ground will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.