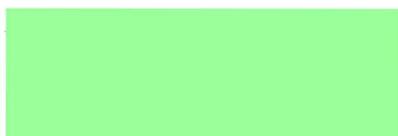


(b)(6)

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



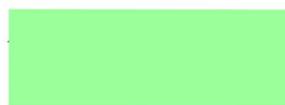
U.S. Citizenship
and Immigration
Services



DATE: JUN 03 2013

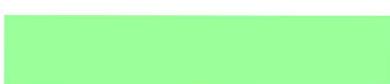
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

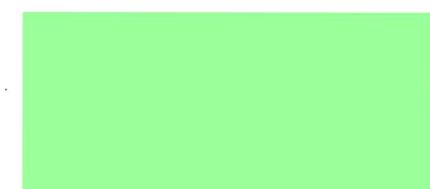
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center.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 claims to be 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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel for the applicant claims that the applicant was convicted of only one misdemeanor because the record of conviction on one of the offenses did not indicate that a "fine" was imposed on the applicant and that the judge had "ordered some form of punishment, penalty or restraint on [the applicant's] liberty." Counsel also claims that as the applicant was ordered to pay court cost as opposed to a fine, the imposition of court cost is not a form of punishment and therefore, the applicant was not convicted of a crime as defined in the Act. Counsel contends that the applicant was convicted of only one misdemeanor crime involving moral turpitude and that the conviction falls within the petty offense exception set forth in the Act because the applicant was placed on probation for six (6) months with no jail time imposed and that the maximum penalty for this misdemeanor does not exceed one year.

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

In this matter, the record reflects that:

1. On July 5, 2004, the applicant was arrested by the Hardee County, Florida Sheriff's Office and charged with Failure to Sign Citation in violation of Florida State Statute section 318.14(3), a misdemeanor in the 2nd degree. Case no. [REDACTED]
2. On February 3, 2011, the applicant was arrested by the Hardee County, Florida Sheriff's office and charged with Soliciting Another to Commit a Lewd Act in violation of Florida State Statute section 796.07, a misdemeanor in the 2nd degree. Case no. [REDACTED]

The evidence of record shows that on July 21, 2004, before the Hardee County Court in Florida, the applicant pled guilty to the crime of Failure to Sign Citation in violation of Florida State Statute section 318.14(3), a 2nd degree misdemeanor. The court withheld adjudication upon the applicant's guilty plea and ordered him to pay court cost of \$205. The record also shows that on February 24, 2011, before the Polk County Court in Florida, the applicant pled guilty to the crime of Soliciting Another to Commit a Lewd Act in violation of Florida State Statute section 796.07, a 2nd degree misdemeanor. The court withheld adjudication, sentenced the applicant to probation for six months and ordered him to pay a fine of \$320.50.

Counsel's assertion on appeal that the applicant's conviction for failure to Sign Citation should not be considered a "conviction" because the applicant was not ordered to pay a "fine" and the judge had not imposed some form of punishment, penalty or restraint on the applicant's liberty is without merit. The Board of Immigration Appeals (BIA) in *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008) held that the imposition of costs and surcharges in the criminal sentencing context constitutes a form of "punishment" or "penalty" for purposes of establishing that an alien has suffered a "conviction" within the meaning of section 101(a)(48)(A) of the Act. Accordingly, the applicant has been "convicted" of a misdemeanor violation of Florida State Statute, section 318.14(3).

Counsel cites to a memorandum issued by U.S. Citizenship and Immigration Services on January 17, 2010, to support her argument that the applicant's failure to sign a citation conviction in Florida should not disqualify him from maintaining TPS. Counsel's assertion is without merit as the memorandum specifically pertains to traffic infractions and violations committed in the state of New York. The state of Florida has not classified the above offense to be a violation or an infraction.

Counsel asserts that the applicant qualifies for an exception under the petty offense exception for his misdemeanor conviction of Florida State Statute 796.07, soliciting another to commit a lewd act. The maximum sentence for the misdemeanor offense under this section of the law is imprisonment in a county jail for a period not exceeding one year. It must be noted that the basis

for the withdrawal of TPS was due to the applicant's ineligibility not inadmissibility. Nevertheless, the applicant qualifies for an exception under the petty offense exception as the maximum sentence for the crime of which he was convicted did not exceed imprisonment for one year, and the applicant did not serve any time in jail.

The applicant remains ineligible for benefits of TPS on the basis of his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel's assertions made on appeal have been considered; however, the regulation is clear that an alien shall not be eligible for TPS under section 244 of the Act if he has been convicted of 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). Consequently, the director's decision to withdraw TPS 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.