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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 16 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
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 filed a Form I-290B, Notice of Appeal or Motion, and indicated at Part 2 that he was filing an appeal for application form "I-821, I-765" and listed the receipt number of the Form I-765 (Application for Employment Authorization). Each application must be adjudicated on its own merits under the statutory provisions and regulations that apply. An applicant must submit a separate Form I-290B with fee for each adverse decision he wants reviewed. Because there are no appeal rights for the Form I-765,[1] and because the only Notice of Decision submitted is for the Form I-821 (Application for Temporary Protected Status), the AAO will treat the filing of the Form I-290B as an appeal from the decision of the Form I-821.

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 had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant did comply with the director's notice as he provided a signed letter from the court indicating that "no documents exist from the alleged December 30, 2000 arrest, as any such records were destroyed as a matter of policy." Counsel states that the applicant has no record of conviction for the arrest, and as such, his TPS cannot be denied for failure to provide such documentation. Counsel resubmits a copy of the letter from the Commonwealth of Virginia Circuit Court of Fairfax County dated May 4, 2012.

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.

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[1] The director advised the applicant that, while the decision from the denial of the Form I-765 could not be appealed, the applicant could file a motion to reopen.

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 Federal Bureau of Investigation, via a fingerprint search, revealed the applicant's criminal history in the state of Virginia as follows:

1. On December 30, 2000, the applicant was arrested by the Fairfax County Police for petit larceny.
2. On June 5, 2010, the applicant was arrested by the Sheriff's Office of Fairfax of possession of marijuana – 1st offense.

In response to the notice issued on February 23, 2012, which requested the applicant to submit certified judgment and court documents from the court(s) for all arrests, the applicant submitted:

- Court documentation in Case no. [redacted] from the Fairfax County General District Court, which indicates that on September 29, 2003, the applicant was convicted of driving while intoxicated – 1st offense, a violation of Virginia Code § 18.2-266, a Class 1 misdemeanor. The applicant was sentenced to serve 30 days in jail and ordered to pay a fine and court cost.

- A local criminal history check from the Fairfax County Police Department which listed the applicant's arrest of June 5, 2010.

- Uniform Summons from the Fairfax County Police and court documentation in Case no. [redacted] from the Fairfax County General District Court. On June 17, 2010, the applicant was charged with possession of marijuana – 1st offense, a violation of Virginia Code § 18.2-250.1, a Class U misdemeanor. On July 27, 2010, the applicant was granted deferred adjudication. On February 2, 2011, the charge was dismissed.

The court record does not indicate that the applicant entered a plea nor did the court find the applicant guilty of the offense. Therefore, the applicant has not been convicted of this drug offense within the meaning of section 101(a)(48)(A) of the Act.

The notice of February 23, 2012, also advised the applicant that if judgment and conviction documents were not available, he must submit a certified statement from the appropriate court(s) indicating why the judgment and conviction documents were not available. The applicant, in response, submitted a photocopied letter from the Commonwealth of Virginia Circuit Court of Fairfax County, dated May 4, 2012, indicating that an unknown case number with a conviction date of February 9, 2001 was no longer available as it has been destroyed in compliance Virginia Code § 16.1-69-57.

Regarding the arrest for petit larceny, counsel asserts on appeal, "[b]ecause there is no proof of conviction, and because [the applicant] has no memory of having been convicted of such charge, [the applicant] cannot be denied TPS on such basis. Counsel citing *Moreau v. Fuller* 276 VA 127 (2008) states as there is no valid conviction under Virginia law as there is no written order at all.

Counsel's assertions, however, are not persuasive as: 1) the document was not certified by the court as requested by the director; 2) the court document indicates a "Judgment/Conviction Date" of February 9, 2001; 3) the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction; and 4) it is not clear whether this court document relates to the petit larceny arrest. The arrest information, such as the date and place of arrest and offense, was not listed on the document. The applicant has the burden to establish with affirmative evidence that an offense was either dismissed or was in error.

The applicant is 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 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.