



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUL 21 2014

Office: VERMONT SERVICE CENTER

FILE: [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: Self-represented

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 November 27, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that he was not convicted of a misdemeanor in the state of Illinois. The applicant states that he was arrested for a local traffic offense and he paid the fine. The applicant provides additional copies of the court dispositions for each offense.

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 Federal Bureau of Investigation report reflects that:

1. On January 9, 2011, the applicant was arrested by the [REDACTED] Police Department (Florida) for driving under the influence.

2. On November 25, 2012, the applicant was arrested by the [REDACTED] Police Department (Illinois) for driving while license is revoked or suspended.

In response to the notice issued on September 19, 2013, which requested certified judgment and conviction documents from the courts for all arrests, the applicant submitted the following:

- Court documentation in Case no. [REDACTED] from the Circuit Court of the Fourth Judicial Circuit, [REDACTED] County, Illinois, which indicates that on October 4, 2013, the applicant was found guilty of violating 625 ILCS 5/6-303(a), driving on suspended license, a Class A misdemeanor. The applicant was ordered to pay a fine and court cost.
- Court documentation in Case no. [REDACTED] from the Circuit and County Courts of [REDACTED] County, Florida, which indicates that on February 2, 2011, the applicant pled *nolo contendere* to violating Florida Statute 316.193(1), driving under the influence, a misdemeanor. The applicant was placed on probation for six months, ordered to perform 50 hours of community service and pay a fine and court cost.

The applicant's assertion on appeal is without merit. The regulation clearly states that a misdemeanor is a crime "*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly 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." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Illinois and Florida laws. In this case, Illinois law provides that a first violation of driving on a suspended license is classified as a Class A misdemeanor. 625 ILCS 5/6-303(a). Illinois law provides that an individual who is convicted under a Class A misdemeanor is subject to imprisonment not to exceed one year or a fine not exceeding \$2500, or both. 730 ILCS 5/5-4.5-55. Florida law provides that a violation of driving under the influence is punishable by up to six months incarceration and by a fine up to \$1000. Florida Statute 316.193(2a).

The applicant has applied for benefits under the federal law. Therefore, the applicant's convictions listed above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1. In the instant case, the court documents submitted reflect that the applicant pled *nolo contendere* to and/or was found guilty of the charges, and the judge ordered some form of penalty and/or restraint on the applicant's liberty to each charge. Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

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 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.