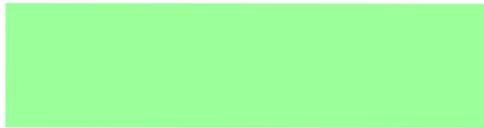




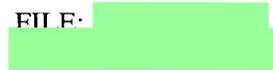
U.S. Citizenship
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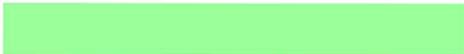
(b)(6)



DATE: **JUL 28 2014**

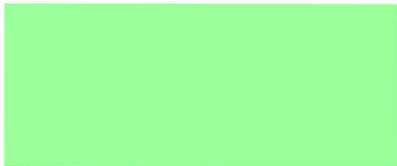
Office: VERMONT SERVICE CENTER

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:

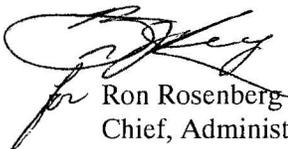


INSTRUCTIONS:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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. On October 15, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that because the applicant did not receive a sentence for imprisonment for his 2012 battery conviction, it is not a misdemeanor for the purpose of determining his eligibility for TPS.

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."

In response to the notice issued on August 16, 2013, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted the following:

1. Court documentation in Case no. [REDACTED] from [REDACTED] County Superior Court of California, which indicates that on April 10, 2012, the applicant pled *nolo contendere* to and was adjudged guilty of violating section 242 PC, battery, a misdemeanor. Imposition of sentence was suspended and the applicant was placed on summary probation for twelve months, ordered to pay a fine and court costs and enroll and complete an anger management program.
2. Court documentation in Case no. [REDACTED] MA from the [REDACTED] County Superior Court of California, which indicates that on December 27, 2007, “the Original Complaint defendant pleads GUILTY to all counts” of violating section 213152(a) VC, driving under the influence, and section 23152(b) VC, driving with .08 percent or more alcohol in the blood, both misdemeanors. For violating section 23152(b) VC, the sentence was stayed pursuant to section 654 PC.¹ For violating section 23152(a) VC, imposition of sentence was suspended and the applicant was placed on informal probation for three years, ordered to pay a fine and court costs, and attend and complete Level 1 First Offender Alcohol Program. The applicant violated probation, and on May 6, 2008, he was subsequently sentenced to five days in jail.

Citing 8 C.F.R. § 244.1, counsel argues on appeal, that because the applicant did not receive a sentence for the conviction in number one above, it did not meet the regulatory definition of a misdemeanor. Counsel’s interpretation of the regulation is incorrect. 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 California law, not the specific prison term meted out by the judge in a particular case. California law provides that a violation of section 242 PC, is punishable by imprisonment in a county jail not exceeding six months. Therefore, it is concluded that the battery offense qualifies as a misdemeanor as defined for immigration purposes in 8 C.F.R. § 244.1. 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 as he has been convicted of at least two misdemeanors 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.

¹ (a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

(b)(6)

NON-PRECEDENT DECISION

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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.