

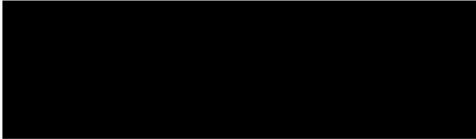
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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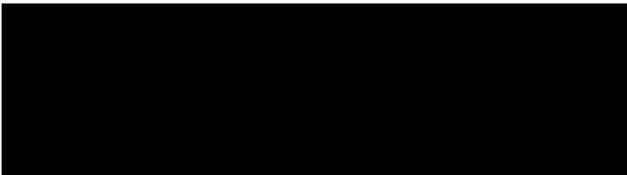
DATE: **JAN 25 2012** Office: VERMONT SERVICE CENTER

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 in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel submits the requested court documents. Counsel asserts that the applicant's convictions should not be considered misdemeanors for TPS purposes as Florida law does not treat violations for saltwater fishing regulations in the same manner as it treats misdemeanor crimes; they are punishable as lesser violations and regulatory in nature. Counsel asserts that the traffic violation is only punishable for up to 60 days imprisonment; it is not as serious as misdemeanors which can be punished for up to one year in prison.

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.

The Federal Bureau of Investigation report dated February 25, 2010, reveals the following offenses in the state of Florida:

1. On February 2, 2008, the applicant was arrested by the Jacksonville Sheriff's Office for violating salt water fish regulations, a violation of Florida Statute 370.021.¹
2. On December 28, 2008, the applicant was arrested by the Jacksonville Sheriff's Office for knowingly operating a vehicle when license is suspended, canceled, a violation of Florida Statute 3322-34(2) and attaching license plate or validation sticker, a violation of Florida Statute 370.261.
3. On August 23, 2009, the applicant was arrested by the Jacksonville Sheriff's Office for violating salt water fish regulations a violation of Florida Statute

On September 22, 2010, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. The applicant, however, failed to respond to the notice. Accordingly, on January 24, 2011, the director withdrew the applicant's TPS.

On appeal, counsel submits:

- Court documentation in Case no. [REDACTED] from the Clerk of the County Court for Duval County, which indicates that on March 6, 2008, the applicant pled guilty to violating wildlife conservation resource laws, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine.
- Court documentation in Case no. [REDACTED] from the Clerk of the County Court for Duval County, which indicates that on February 3, 2009, the applicant pled guilty to violating unlawful attaching license plate or validation sticker, a misdemeanor of the second degree. The applicant was sentenced to serve two days in jail with credit for time served and was ordered to pay a fine. The court entered *nolle prosequi* for the remaining charge.
- Court documentation in Case no. [REDACTED] from the Clerk of the County Court for Duval County, which indicates that on September 22, 2009, the applicant pled *nolo contendere* to violating fish and wildlife conservation resource laws, a misdemeanor of the second degree. The applicant was ordered to pay court cost.

Counsel cites memorandums issued by U.S. Citizenship and Immigration Services (USCIS) on January 17, 2010, and January 21, 2011, to support her argument that the applicant's convictions in Florida should not disqualify him from maintaining TPS. The memorandum dated January 17, 2010, specifically pertains to traffic infractions and violations committed in the state of New York. The state of Florida has not classified any of the above violations to be infractions. The

¹ Now Florida Statute section 370.407.

memorandum dated January 21, 2011, specifically pertains to certain offenses where the court has issued a “no jail” or “no incarceration” certification. The court documents submitted do not indicate that a “no jail” or “no incarceration certification” was issued pursuant to Rule 3.994 of the Florida Rules of Criminal Procedure.

The penalty upon a first conviction of violating Florida statute 370.021(1)(a) is by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 and not more than \$500, or by both such fine and imprisonment.

The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days or by a fine of not more than \$500, or by both such fine and imprisonment. *See* Florida Statute sections 775.082 and 775.083.

As cited above, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.*

In the instant case, the court documents submitted reflect that the applicant was found guilty of each offense, and the judge ordered some form of punishment to the charges above. Therefore, for immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS because 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). Counsel’s statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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 from the withdrawal of the TPS application is dismissed.