



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

AUG 28 2013

Office: VERMONT SERVICE CENTER

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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.

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that because the convictions arose out of the same offense it should, for immigration purposes, be considered one misdemeanor instead of multiple misdemeanors.

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 current Federal Bureau of Investigation report reflects the applicant's criminal history in the state of Texas as follows:

1. On February 2, 1999, the applicant was arrested or received for illegal entry into the United States.
2. On March 18, 2010, the applicant was arrested by the Sheriff's Office in [REDACTED] for assault causing bodily injury to family member, a violation of Texas Penal Code section 22.01(a)(1).
3. On April 30, 2010, the applicant was arrested by the Sheriff's Office in [REDACTED] for two counts of assault causing bodily injury to family member, a violation of Texas Penal Code section 22.01(a)(1).

In response to the notice of February 28, 2012, which requested certified judgment and conviction documents from the courts for all arrests the applicant submitted:

- Court documentation in Case no. [REDACTED] which indicated that on August 20, 2010, the applicant pled guilty to assault – family violence, a misdemeanor. Adjudication of guilt was deferred. The applicant was placed on probation for nine months. Along with other conditions of probation, the applicant was ordered to pay a fine, court cost and complete a domestic violence program.
- Court documentation in Case no. [REDACTED], which indicated that on August 20, 2010, the applicant pled guilty to assault – family violence, a misdemeanor. Adjudication of guilt was deferred. The applicant was placed on probation for nine months and subjected to 18 conditions of probation including completing a domestic violence program.
- Court documentation in Case no. [REDACTED] which indicated that on August 20, 2010, the applicant pled guilty to assault – family violence, a misdemeanor. Adjudication of guilt was deferred. The applicant was placed on probation for nine months and subjected to 18 conditions of probation including completing a domestic violence program.
- An Order Dismissing Deferred Proceedings dated June 7, 2011.

Counsel's assertion that the above offenses arose in a single occasion and, therefore, the applicant was convicted of a single misdemeanor offense, cannot be accepted. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Act, or to eligibility under deferred action, this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court documents, the applicant was charged with three separate violations to which he pled guilty/nolo contendere to three separate crimes and the court ordered three separate penalties/punishments. Therefore, the applicant has been convicted of three separate and distinct offenses.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on or about January 23, 1998, the applicant entered the United States without inspection. On February 19, 1998, a removal hearing was held and the applicant was ordered removed from the United States to Honduras. The Form I-205, Warrant of Removal/Deportation, indicates that the applicant was removed on May 14, 1998, via airline at the [REDACTED]

According to the Form I-213, Record of Deportable/Inadmissible Alien, dated February 6, 1999, the applicant entered the United States on February 5, 1999 by wading the river near [REDACTED] Texas. The applicant indicated that he travelled through Mexico via a freight train and was enroute to [REDACTED] Texas. This matter must be addressed in any future proceedings.

ORDER: The appeal is dismissed.