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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

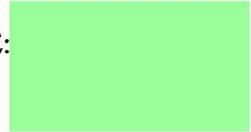


U.S. Citizenship
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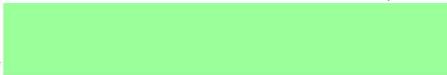


DATE: **FEB 07 2013** Office: VERMONT SERVICE CENTER

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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 asserts that the applicant did submit a response to the notice requesting court dispositions for his offenses. Counsel states that the letter from the court indicating that due to the passage of time, the record no longer exists should not be held against the applicant. Counsel argues that the remaining conviction of driving while license is suspended or revoked is "clearly a sentence of "no jail" "no incarceration" the court intended to treat a misdemeanor as a traffic 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. 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.

On January 27, 2012, the applicant was requested to submit certified judgment and conviction documents for his arrest on June 16, 1996 by the [REDACTED] Police Department for driving under the influence, and on November 6, 1996 by the [REDACTED] Police Department for driving while license is suspended or revoked.

Counsel, in response, asserted that the applicant was not able to provide the court record for his June 16, 1996 arrest because the record was no longer kept by the court. Counsel submits:

- Uniform Traffic Citation and court documents relating to the applicant's arrest on November 6, 1996 for driving while license is suspended/revoked, a violation of O.C.G.A. 40-5-121(a), a misdemeanor. On December 2, 1996, the applicant pled guilty to the misdemeanor offense. The applicant was ordered to pay a fine of \$500 and to perform 40 hours of community service and was placed on probation for six months. Case no. [REDACTED]
- A printout certified to be a true and correct copy of the original from the [REDACTED] Municipal Court, which indicates that on August 12, 1996, the applicant was found guilty of driving under influence, a violation of O.C.G.A. 40-6-391(A)(1), a misdemeanor. The applicant was placed on probation for one year, and ordered to perform 40 hours of community service and pay a fine of \$405. Case no. [REDACTED]
- A letter dated February 3, 2012, from the court clerk of [REDACTED] Municipal Court (Georgia), who indicates that due to retention laws, the court is not able to provide a certified copy of the disposition of the applicant's June 16, 1996 offense of driving under the influence.

As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish with affirmative evidence that the offense was either dismissed or was in error.

Contrary to counsel's assertion, a conviction of driving while license is suspended or revoked is a misdemeanor. *See* O.C.G.A. 40-5-58(a). Counsel's argument does not take into consideration that U.S. Citizenship and Immigration Services regulation define a "misdemeanor" as more than five days but less than a year and a day. 8 C.F.R. § 244.1. Because the applicant was convicted of a crime (driving while license is suspended or revoked) for which he could have received a jail sentence of more than five days, he has, for immigration purposes, been convicted of the misdemeanor. The court documentation in Case no. [REDACTED] does not indicate that a "no jail" or "no incarceration" certification had been issued and no certification was presented on appeal. The applicant's guilty plea is a conviction within the meaning of section 101(a)(48)(A) of the Act.

It is noted that the certified printouts of both offenses were previously submitted by counsel in response to a notice issued on October 16, 2005. Thus, it is unclear why the applicant's TPS was not withdrawn at that time. If the applicant's previous re-registration applications were approved without reviewing all the contents in the record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors

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as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Just because the service center director had approved the re-registration applications, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the court documents submitted 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). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

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.