



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **FEB 26 2013**

Office: VERMONT SERVICE CENTER

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:
[REDACTED]

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

(b)(6)

Page 2

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 applicant received only a fine for his conviction of not having liability insurance, the misdemeanor should not be counted against him.

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.

In response to a notice dated May 2, 2012, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant submitted:

- Court documentation in Cause no. [REDACTED] from the [REDACTED] of Texas, which indicates that on July 29, 1991, the applicant pled guilty to driving while intoxicated, a violation of Texas Penal Code section 49.04, a Class A misdemeanor. The applicant was sentenced to serve time in jail and ordered to pay a fine. Cause no. [REDACTED]

- Court documentation from the [REDACTED] Kansas, which indicates that on December 2, 2011, in [REDACTED] the applicant pled guilty to driving without motor vehicle liability insurance, a violation of section KSA section 40-3104, a Class B misdemeanor. The applicant was ordered to pay a fine.

The director determined that the applicant had two misdemeanor convictions and withdrew TPS.

Counsel's statement on appeal has been considered. However, anyone who violates any provision of section 40-3104 shall be subject to a fine of not less than \$300 nor more than \$1000 or confinement in the county jail for a term of not more than six months, or both such fine and confinement. KSA section 40-3104(g). As noted above, for immigration purposes, 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*. Because the applicant was convicted of a crime for which he could have received a jail sentence of more than five days, he has, for immigration purposes, been convicted of a misdemeanor. The applicant's guilty plea is a conviction 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.