



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 17 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 documentation relating to his criminal record.

On appeal, counsel argues "not submitting a sworn statement or arrest reports by [the applicant] are not inadequate to the degree that the withdrawal of her [sic] initial TPS application can be justified in light of the applicant's response and supporting documents collectively." Counsel asserts that an order of *nolle prosequi* does not count toward the two misdemeanors which, under the Act, would disqualify an applicant 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. 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.

Section 212(a)(2)(D) of the Act provides, in pertinent part, that:

(D) *Prostitution and commercialized vice.*—Any alien who—

- (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years

of the date of application for a visa, admission, or adjustment of status,

- (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
- (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

The record reveals that the applicant was arrested on [REDACTED] 2010 and [REDACTED] 2011 by the [REDACTED] of Washington, D.C. for prostitution–sexual solicitation.

On March 12, 2012, a notice was issued which requested the applicant to submit the arrest/police reports, certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted a Release Order Addendum dated [REDACTED] 2011, a Community Service Program Host Site Contact Form dated [REDACTED] 2012, and a court document in Case no. [REDACTED] dated [REDACTED] 2011, which indicated that the applicant entered a plea of not guilty.

On April 26, 2012, a notice was issued which advised the applicant that based on the evidence submitted in response to the notice of March 12, 2012, it appeared that he may have been convicted of the prostitution offenses and that he may also be inadmissible under section 212(a)(2)(D) of the Act. The applicant was requested to submit: 1) the arrest/police reports for [REDACTED] 2010 and [REDACTED] 2011; 2) a sworn statement explaining the circumstances surrounding his arrests on [REDACTED] 2010 and [REDACTED] 2011; and 3) certified judgment and conviction documents for all arrests.

The applicant, in response, submitted court documentation in Case no. [REDACTED] from the Superior Court of the District of Columbia, Criminal Division, which indicates that the offense of sexual solicitation committed on [REDACTED] 2010 was entered into “Nolle-Diversion”¹ on [REDACTED] 2011.

The director determined that the applicant had failed to submit a sworn statement explaining the circumstances surrounding his arrests, copies of the arrest/police reports or court documentation for all his arrests. The director concluded that the applicant failed to submit evidence necessary

¹ The applicant has complied with the conditions of his release as ordered by the court.

for the proper adjudication of the application and withdrew the applicant's TPS on September 19, 2012.

On appeal, counsel provides the court documentation in Case no. [REDACTED] from the Superior Court of the District of Columbia, Criminal Division, which indicates that on [REDACTED] 2011, the applicant entered a plea of not guilty. The offense of sexual solicitation committed on [REDACTED], 2011 was entered into "Nolle-Diversion" on [REDACTED], 2012.

Counsel also provides court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2010, the applicant entered a plea of not guilty.

While the record shows that the charges of sexual solicitation were subsequently dismissed, a conviction is not required for a finding of inadmissibility under section 212(a)(2)(D) of the Act. *Matter of G-*, 5 I&N 559 (BIA 1953).

Counsel asserts that the federal court, the Board of Immigration Appeals, and the AAO in *Kepilino v. Gonzales*, 454 F. 3d 1057, 1062 (9th Cir. 2006), *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 553 (BIA 2008), and in an unpublished AAO decision, have adopted the Department of State's (DOS) definition of "prostitution" in relation to inadmissibility under section 212(a)(2)(D) of the Act, which provides:

The term "prostitution" means engaging in *promiscuous* sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on *elements of continuity and regularity*, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of *casual or isolated acts*.

[Emphasis in original] 22 C.F.R. § 40.24(b) (2006).

Counsel asserts that even if the applicant had in fact committed, pled guilty to or was convicted of any wrongdoing, the two isolated incidents would still not constitute "prostitution" under section 212(a)(2)(D) of the Act as interpreted by the courts.

"Solicit for prostitution" means to invite, entice, offer, persuade, or agree to engage in prostitution or address for the purpose of inviting, enticing, offering, persuading, or agreeing to engage in prostitution. District of Columbia Code section 22-2701.01(7).

In *Kepilino v. Gonzales*, as there were no factual details about Kepilino's conviction in the record of conviction, the court looked at the criminal trial court's calendar for March 2, 1999 and the public "Rap" sheet in the administrative record before reaching its conclusion that the individual's conduct did not constitute prostitution.

In an attempt to clarify whether the two events were isolated occurrences as alleged by counsel or a pattern test that could establish prostitution, the director requested that the applicant submit a

sworn statement explaining the circumstances surrounding his arrests and the arrest reports. Despite numerous opportunities to provide the requested documents, the applicant has failed to do so.

Applicants shall submit all documentation as requested by U.S. Citizenship and Immigration Services. 8 C.F.R. § 244.9(a). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).

The applicant is ineligible for TPS because of his failure to provide a sworn statement explaining the circumstances surrounding his arrests and the arrest/police reports necessary for the adjudication of his application. 8 C.F.R. § 244.9(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 from the withdrawal of the TPS application is dismissed.