



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 26 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 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The AAO dismissed the applicant's appeal and the matter is again before the AAO on a motion to reopen. The motion will be dismissed.

The applicant claims to be a native and citizen of Honduras who is seeking 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 determined that the applicant had been convicted of an aggravated felony and was no longer eligible 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. 8 C.F.R. § 244.14(a)(1).

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹ A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

"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 director, in denying the application on January 30, 2007, determined that the applicant had been convicted under New York State Penal Law Title H, Article 130 Section 130.20.

On motion, counsel submits a Certificate of Disposition Dismissal, [REDACTED] County, [REDACTED] New

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

York, which indicates that on October 15, 2012, the case was dismissed and all pending criminal charges related were also dismissed.

According to the applicant's FBI fingerprint results report, the applicant was convicted upon a plea of guilty to the above crime and was sentenced to six years' probation and an order of protection was issued. The report indicates that on September 29, 2004, the applicant registered as a sexual offender with the following agency: NY DCJS [REDACTED] with a registry expiration date of September 29, 2024. Therefore, the applicant, as a registered sexual offender, is not eligible for TPS. Therefore, the director's January 30, 2007 decision to withdraw TPS and the AAO's previous decision dated May 6, 2010 are affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements and is otherwise eligible for TPS under the provisions of section 244 of the Act. The applicant has not met this burden.

ORDER: The motion is dismissed.