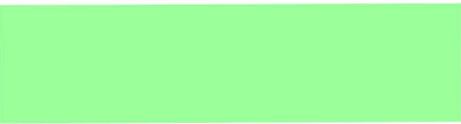




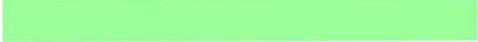
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 15 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:

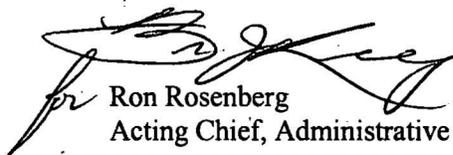


INSTRUCTIONS:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel argues that the director's decision does not address the argument that the withdrawal of TPS is discretionary and discretion weighs in favor of allowing the applicant to maintain his TPS status. Counsel states, "[t]he decision erroneously states it was an M1 offense which is incorrect. Disorderly conduct is an M4 which is a less serious offense. As a result the offense should be considered a mere violation."

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.

The record contains:

1. Court documentation in Case no. [REDACTED] from the County Court of Hidalgo County, Texas, which indicates that on March 13, 2000, the applicant was convicted of driving while intoxicated, a violation of Texas Penal Code 49.04 PC, a misdemeanor. The applicant was sentenced to serve 30 days in jail and

ordered to pay a fine. Imposition of sentence was suspended and the applicant was placed on supervision probation for one year.

2. Court documentation in Case no. [REDACTED] from the Norwalk Municipal Court, Norwalk, Ohio, which indicates that on April 2, 2012, the applicant was found guilty of disorderly conduct, a violation of ORC section 2917.11A1E3A, a misdemeanor of the fourth degree. The applicant was sentenced to serve 30 days in jail of which 28 days were suspended, ordered to pay a fine and court cost and was placed on probation for two years.

Counsel asserts that a conviction of a misdemeanor of the fourth degree is a less serious offense and, therefore, the applicant's conviction of disorderly conduct should be considered a mere violation. The applicant, however, should have raised this argument in the appropriate appellate court. The AAO is not the proper forum for disputing the validity of state convictions, and does not have authority to look beyond the record of conviction when determining an applicant's eligibility for TPS.

The director, in his decision, indicated that the applicant had been convicted of a misdemeanor of the first degree offense of disorderly conduct.¹ This was a harmless error by the director, which did not affect the outcome of his decision and has not prejudiced the applicant. The punishment for a misdemeanor of the fourth degree is a jail term of not more than thirty days and a fine of not more than \$250. ORC sections 2929.24(A)(4) and 2929.28(A)(2)(a)(iv). As cited 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.*

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."

It is presumed that the director is aware of the regulations and statutes and the fact that he did not specifically state that he was exercising his discretion does not render his decision invalid. The AAO finds the director did not abuse his discretion in the withdrawal of the applicant's TPS.

In the instant case, the court documents submitted reflect that the applicant pled guilty to driving while intoxicated and was found guilty by a judge of disorderly conduct. The judge ordered some form of punishment and/or penalty to each charge above. Therefore, for immigration purposes, the applicant has been convicted of both misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

¹ The punishment for a misdemeanor of the first degree is a jail term of not more than 180 days and a fine of not more than \$1000.

(b)(6)

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.

While not the basis for the dismissal of the appeal, it is noted that the record reflects that a removal hearing was held on December 8, 1998 and the applicant was granted voluntary departure from the United States on or before December 29, 1998. On January 22, 1999, a Form I-205, Warrant of Removal/Deportation, was issued. On January 27, 1999, a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

ORDER: The appeal is dismissed.