

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  
and Immigration  
Services

(b)(6)

DATE: **NOV 22 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The applicant appealed this withdrawal to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The applicant subsequently filed a motion to reopen and to reconsider. The motion will be granted and the appeal will be sustained.

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.<sup>1</sup> On February 26, 2013, the AAO dismissed the appeal as the record revealed that the applicant had two misdemeanor convictions. The AAO noted that 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 [REDACTED] Court 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. [REDACTED]
- Court documentation from the [REDACTED] which indicates that on December 2, 2011, i [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.

Due to the applicant's two misdemeanor convictions the applicant was ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the AAO affirmed the director's decision to withdraw TPS.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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<sup>1</sup> 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).

The record shows that the motion is properly filed, timely and meets the requirements for a motion. Thus the motion will be granted. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon motion.

On motion, counsel asserts that the applicant is not ineligible for TPS as one of his misdemeanor convictions has been dismissed. In support, counsel submits an Order of Dismissal With Prejudice, from the [REDACTED] filed April 5, 2013. Citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S. 2010), the court ordered the matter (Case No: 12-26414) dismissed for lack of constitutional waiver.

In the instant case, the applicant claimed defect in the underlying criminal proceedings. The state court's dismissal of the misdemeanor conviction under KSA section 40-3104, eliminates the immigration consequences of this conviction.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS, and the decision of the AAO affirming the director's decision, shall be withdrawn. The applicant's TPS will be reinstated.

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 met this burden.

**ORDER:** The motion is granted. The decisions of the director dated July 5, 2012 and of the AAO dated February 26, 2013 are withdrawn. The appeal is sustained.