



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: SEP 03 2013

Office: CALIFORNIA 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center.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 Haiti 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 it was determined that the applicant had been convicted of three misdemeanors in the United States.

On appeal, counsel states that the applicant has only two misdemeanor convictions, which are minor traffic violations. Counsel requests reconsideration of the applicant's ineligibility 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).

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.

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."

On appeal, counsel asserts that the applicant was not convicted on December 15, 2010 of driving while license suspended as the charge was *nolle prosequi*. Counsel provides an unpublished AAO decision to support his assertion that a *nolle prosequi* does not render an individual ineligible for TPS. Counsel submits another unpublished decision in which the AAO determined that driving without a license in the state of Ohio was not considered a misdemeanor for immigration purposes as it carried no jail time.

While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO will review the present matter on a *de novo* basis based on the evidence of record, applicable law and precedent decisions.<sup>1</sup> Furthermore, counsel has furnished no evidence to establish that the facts of the instant application are analogous to those in the unpublished decisions.

The record contains:

1. Court documentation in Case no. [REDACTED] from the County Court of Orange County, Florida, which indicates that on December 15, 2010, the applicant pled *nolo contendere* to and was found guilty of violating Florida Statute 322.34(2), driving while license suspended, a misdemeanor in the second degree. The applicant was sentenced to serve one day in jail (credited with time served) and was ordered to pay a fine and court cost.
2. Court documentation in Case no. [REDACTED] from the County Court of Orange County, Florida, which indicates that on December 9, 2010, the applicant pled guilty to and was found guilty of violating Florida Statute, 322.03(1), no valid driver's license, a misdemeanor of the second degree. The applicant was ordered to pay a fine and court cost.
3. Court documentation in Case no. [REDACTED] from the County Court of Orange County, Florida, which indicates that on January 21, 2003, the applicant pled *nolo contendere* to violating Florida Statute 322.34(2), driving while license suspended, a misdemeanor in the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and court cost.

Contrary to counsel's assertion, the court disposition in Case no. [REDACTED] does not indicate that a *nolle prosequi* was entered for the charge of driving while license suspended.

A conviction of a misdemeanor of the second degree is punishable by up to 60 days in jail. See Florida Statute 775.082(4)(b). 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.*" (Emphasis added.) Therefore, the above offenses constitute misdemeanors for immigration purposes. 8 C.F.R. § 244.1

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<sup>1</sup> See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In the instant case, the court documents submitted reflect that the applicant pled *nolo contendere* or guilty to violating Florida Statutes 322.34(2) and 322.03(1), and the judge ordered some form of punishment/penalty to each charge above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes. Section 101(a)(48)(A) of the Act

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.