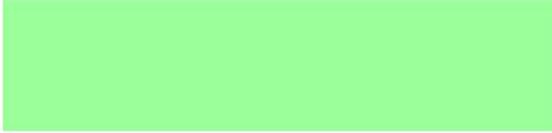




U.S. Citizenship  
and Immigration  
Services

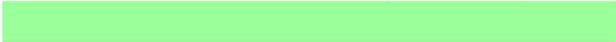
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DATE: APR 11 2014 Office: VERMONT SERVICE CENTER

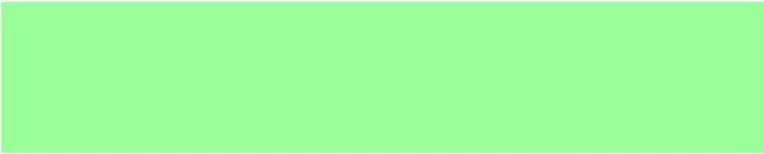


IN RE: Applicant:



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,

Ron Rosenberg  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 on appeal. 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.

On October 24, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. On appeal, counsel submits "no incarceration" certificates from the Florida courts relating to the applicant's criminal convictions.

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."

The record contains:

1. Documentation from the County Court, Criminal Division, in and for [REDACTED] County, Florida, which indicates that on August 22, 2012, the applicant pled *nolo contendere* to and was adjudged guilty of driving under the influence of alcohol (DUI). Imposition of sentence was withheld, and the applicant was placed on

probation for twelve months. The applicant was also ordered to pay a fine and court cost, complete a DUI school, and 50 hours of community service. Case no. [REDACTED]

2. Documentation from the County Court, Criminal Division, in and for [REDACTED] County, Florida, which indicates that on February 6, 2013, the applicant was adjudged guilty of driving while license suspended. The applicant was ordered to pay a fine and court cost and was placed on probation for six months. Case no. [REDACTED]

On appeal, counsel submits an "Order Certifying No Incarceration" from the Clerk of the Circuit Court, [REDACTED] County, Florida, indicating that the court did not impose jail in Case numbers [REDACTED]. Counsel provides a memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support her argument that the applicant's convictions in Florida should not disqualify him from maintaining TPS. The memorandum dated January 21, 2011, pertains to certain offenses where the Florida courts has issued a "no jail" or "no incarceration" certification.

Pursuant to the memorandum of January 21, 2011, for purposes of the TPS statute and regulations, USCIS has determined that a Florida offense that has such certification does not meet the definition of a misdemeanor under 8 C.F.R. § 244.1 as it would not constitute an offense punishable by imprisonment. Accordingly, the offenses in Case numbers [REDACTED] do not constitute misdemeanors for immigration purposes.

The applicant has no misdemeanor or felony convictions, and there are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and TPS reinstated.

An alien applying for temporary protected status 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 appeal is sustained.