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U.S. Citizenship
and Immigration
Services

DATE: JAN 06 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. 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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 or more misdemeanors in the United States, noting that the applicant had three (3) misdemeanor convictions.

On appeal, counsel concedes that the applicant has three misdemeanor convictions, specifically, misdemeanor battery on September 11, 2011; driving while license suspended on May 29, 2009;¹ and driving without a license on December 7, 2009. She contends, however, that two of the convictions are "Traffic Misdemeanors" for which there was "No Jail" and are not considered misdemeanors for TPS purposes because the two charges do not constitute an offense punishable by imprisonment, and that the two traffic offenses are "petty offenses" which are not punishable by more than six months imprisonment or a fine, or both, and do not meet the definition of a misdemeanor for TPS purposes. Counsel submits Clerk's Certificates of the court dispositions convictions of May 29, 2009, and December 7, 2009.

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

¹ It is noted that the record reflects that the applicant was convicted for driving while license suspended on May 29, 2009, and not on May 29, 2012, as noted in the director's decision. The error is deemed harmless.

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 the following:

1. Court documentation in Case No. [REDACTED] Municipal Court, Traffic Division, which indicates that on December 7, 2009, the applicant pled nolo contendere and was found guilty of driving without a license with knowledge, a violation of Florida Motor Vehicle Code § 322.03(1). The applicant was sentenced to six (6) months of probation, 200 hours community service, and fined \$358.00;
2. Court documentation in Case [REDACTED] Municipal Court, Traffic Division, which indicates that on May 29, 2009, the applicant pled nolo contendere and was found guilty of driving while license suspended, a violation of Florida Motor Vehicle Code § 322.34(2). The applicant was fined \$358.00; and,
3. Court documentation in Case No. [REDACTED] Court, Criminal Division, which indicates that on September 11, 2011, the applicant plead nolo contendere and was found guilty of battery, a violation of Florida Statute 784.03, a misdemeanor of the first degree. The applicant was placed on probation and fined.

Counsel cites memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011², to support her argument that the applicant's convictions in Florida should not disqualify him from maintaining TPS. This memorandum provides guidance for adjudication of TPS applications and administrative appeals in cases involving certain offenses where a state or local court has issued a "no jail" or "no incarceration" certification related to the offense.

The court documents submitted, however, do not indicate that a "no jail" or "no incarceration certification" had been issued and no certification was presented on appeal.

The court documents reflect that the applicant pled nolo contendere to each offense and the judge ordered some form of penalty to each charge and/or a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offenses for immigration purposes. As cited above, 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.)

² Temporary Protected Status Adjudications Involving "No Jail" or "No Incarceration" Certifications, and Reminder for Cases Involving Certain Potential Misdemeanors, Revisions to the *Adjudicator's Field Manual (AFM)* Chapter 38.1(e)(12). AFM Update AD11-21.

Under Florida Statute, Title XLVI, Chapter 775, a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year, and a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. A violation of Florida Motor Vehicle Code § 322.34(2) is a misdemeanor of the second degree, and a violation of § 322.03(1) is a misdemeanor of the first degree. Contrary to counsel's contention, none of offenses for which the applicant has been convicted fall under the petty offense exception.

The AAO has reviewed counsel's brief on appeal and the authorities cited therein, and concludes that the misdemeanor convictions continue to affect immigration consequences. 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.