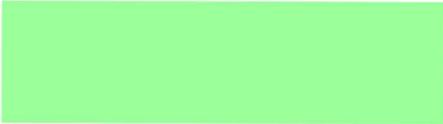


(b)(6)



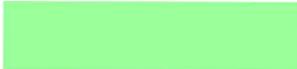
U.S. Citizenship
and Immigration
Services



DATE: JUL 14 2014

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: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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. On September 16, 2013, the director withdrew TPS because the applicant had failed to submit requested court documentation relating to an arrest on December 19, 2002 for shoplifting.

On appeal, the applicant states that he did not previously submit the disposition for his shoplifting offense because "I just had to pay a fine and I wasn't arrested and I thought it was enough with all documentation I already send." The applicant submits the requested court disposition.

The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, to date, no additional correspondence has been presented by the applicant. Therefore, the record must be considered complete.

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.

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

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 certified court documentation in Case no [REDACTED] from the County Court of the Fifteenth Judicial Circuit in and for [REDACTED] Florida, which indicates that on April 18, 2011, the applicant pled guilty to and was adjudged guilty of driving under the influence (enhanced), a violation of Florida Statute 316-193(1) and (4), a misdemeanor. The applicant was ordered to serve 30 days in jail, perform 50 hours of community service, enroll in a DUI school and was placed on probation for 12 months.

On appeal, the applicant submits certified court documentation from the Municipal Court of [REDACTED] New Jersey, which indicates that the applicant pled guilty to and was adjudged guilty of violating NJS 2C:2-11b(1), shoplifting. The applicant was ordered to pay a fine of \$501 and court costs. Complaint # [REDACTED]

NJS 2C:20-11(c) provides that shoplifting of merchandise of more than \$200 is a crime, while shoplifting of merchandise of less than \$200 is a disorderly persons offense. NJS 2C:1-4(b) provides that disorderly persons offenses are petty offense and are not crimes within the meaning of the Constitution of the State. A disorderly persons offense is punishable by imprisonment in the county jail for not more than six months. NJS 2C:43-8. A crime of the fourth degree shall not exceed 18 months of imprisonment. NJS 2C:43-6.

In the instant case, the grade of the offense is unknown as the court documents submitted do not indicate the full retail value of the merchandise the applicant shoplifted.

Federal immigration laws, however, should be applied uniformly, without regard to the nuances of state law. See *Ye v. INS*, 214 F.3d 1128, 1132 (9th Cir. 2000); *Burr v. INS*, 350 F.2d 87, 90 (9th Cir. 1965). Thus, whether a particular offense under state law constitutes a "misdemeanor" for immigration purposes is strictly a matter of federal law. See *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *Cabral v. INS*, 15 F.3d 193, 196 n.5 (1st Cir. 1994). Whether the applicant was convicted of a “disorderly persons offense” or a “crime” is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes. The regulation clearly states that a misdemeanor is a crime “*punishable by imprisonment for . . . one year or less, regardless of the term . . . actually served.*” [Emphasis added.] It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. As the applicant could have been imprisoned by up to 60 days for a disorderly persons offense or up to 18 months for a crime of the fourth degree, it is concluded that the applicant’s conviction for shoplifting on January 9, 2003 qualifies as a misdemeanor as defined for immigration purposes in 8 C.F.R. § 244.1.

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.

ORDER: The appeal is dismissed.