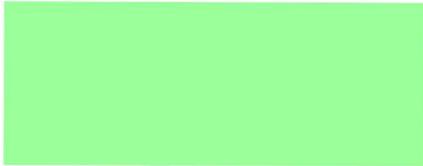


(b)(6)

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

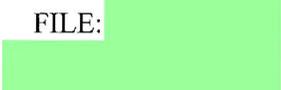


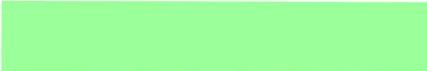
U.S. Citizenship
and Immigration
Services



DATE: **JUN 19 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:

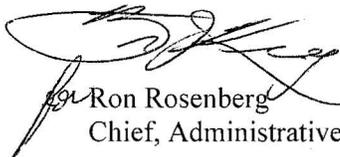


INSTRUCTIONS:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

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 August 26, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant's second misdemeanor conviction was "unconstitutional and he is obtaining post-conviction relief which when granted will re-establish his eligibility." Counsel indicates at Part 2 on the appeal form that he was not submitting a brief or additional evidence. To date, no further correspondence has been presented by counsel or 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.

The record contains the following:

1. Court documentation in Case no. [REDACTED] from the Harris County (Texas) Criminal Court, which indicates that on August 2, 2004, the applicant pled guilty to violating Texas Penal Code § 22.01(a)(1) PC, assault – bodily injury, a Class A misdemeanor. The applicant was sentenced to serve four days in jail and ordered to pay court cost.

2. Court documentation in Case no. [REDACTED] from the Harris County (Texas) Criminal Court, which indicates that on November 12, 2012, the applicant pled nolo contendere to violating Texas Penal Code § 37.08, false report to police officer, a Class B misdemeanor. Adjudication of guilt was deferred. The applicant was ordered to pay a fine and court cost and was placed on probation for one year.

Texas Penal Code § 12.21 establishes the punishment for a Class A Misdemeanor as confinement in jail for a term not to exceed one year and/or a fine not to exceed \$4,000. Texas Penal Code § 12.22 establishes the punishment for a Class B Misdemeanor as confinement in jail for a term not to exceed 180 days and/or a fine not to exceed \$2,000. 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*.

In the instant case, the court documentation submitted reflects that the applicant pled nolo contendere to violating Texas Penal Code § 37.08, and the judge ordered some form of penalty and restraint on the applicant's liberty. Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

Convictions that have been vacated due to procedural or substantive defects in the underlying proceedings are no longer valid convictions for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Without certified documentation from the court indicating that the November 12, 2012 conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor conviction continues to effect immigration consequences.

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.