



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 12 2014**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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 application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Syria who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had been convicted of two misdemeanors in the United States. The director also denied the application because the applicant failed to submit all the requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant does not have two misdemeanor convictions as the court documents clearly indicate that the applicant had been convicted of an infraction offense of section 853.7 of the California Penal Code. Counsel 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, more than eight months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

“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

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.

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 Federal Bureau of Investigation report reveals the following offenses in the state of California:

1. On [REDACTED] the applicant was arrested by the Sheriff's Office of Norwalk for one count of force/assault with a deadly weapon-not firearm, great bodily injury.
2. On [REDACTED] the applicant was arrested by the Sheriff's Office of Norwalk for one count of possession of concentrate cannabis and one count of possession of marijuana while driving.
3. On [REDACTED] the applicant was arrested by the Glendale Police Department for one count of possession of concentrate cannabis.
4. On [REDACTED], the applicant was arrested by the Glendale Police Department for one count of driving under the influence.
5. On [REDACTED], the applicant was arrested by the Glendale Police Department for one count of disorderly conduct, drug w/alcohol.
6. On [REDACTED] the applicant was arrested by the Los Angeles Police Department for one count of sale of marijuana.

Along with his TPS application, the applicant submitted the following:

- For number one, an original letter and a defendant summary from the Los Angeles County Sheriff's Department Headquarters [REDACTED] dated May 9, 2012, indicating that prosecution was declined due to insufficient evidence regarding the applicant's arrest on February 17, 2004. Booking no. [REDACTED]
- For number two, certified court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicates that on December 13, 2006, the applicant was charged with violating section 23222(b) VC, possession of marijuana or open container while driving. On January 11, 2007, the applicant pled not guilty to the misdemeanor offense. On [REDACTED] the case was dismissed in furtherance of justice pursuant to section 1385 PC.
- Certified court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicates that on November 29, 2006, the applicant was charged with violating section 11357(b) H&S, possession of concentrated cannabis. On December 14, 2006, the court amended the complaint to add an

infraction offense of section 853.7 PC, willfully violate promise to appear. The applicant pled guilty to and was convicted of the infraction offense. The remaining charge was dismissed.

- For number three, a photocopied Complaint Assignment Card dated October 17, 2007, from the District Attorney's Office of Glendale/Burbank, indicating that the misdemeanor violation of section 11357 H&S, possession of concentrated cannabis, was rejected.
- For number four, certified court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicates that on August 26, 2009, the applicant was charged with violating sections 23152(a) and (b) VC, driving under the influence and driving with .08 percent or more alcohol in the blood. On November 23, 2009, the applicant pled *nolo contendere* to violating section 23152(b) VC. Imposition of sentence was suspended and the applicant was placed on probation for 36 months on condition he pay a fine and court costs and enroll and complete a first-offender alcohol and drug education program. The remaining charge was dismissed.
- For number six, certified court documentation in Case no. [REDACTED] from the Los Angeles County Superior Court, which indicates that on October 12, 2010, the applicant was charged with violating section 11359 H&S, possession for sale of marijuana. On November 16, 2010, the applicant pled not guilty to the felony offense. On May 11, 2011, the case was dismissed in furtherance of justice pursuant to section 1385 PC.

On January 11, 2013, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submits photocopies of the court documents that were previously provided along with:

- For number three, an incident report [REDACTED] from the Glendale Police Department indicating that the applicant was arrested on September 8, 2007 for possession of concentrated cannabis.
- For number five, an incident report [REDACTED] from the Glendale Police Department, indicating that the applicant was arrested on November 9, 2009 for possession of marijuana and disorderly conduct.

On appeal, counsel resubmits the court documents for Case nos. [REDACTED] and [REDACTED]

In her decision of June 10, 2013, the director determined that the applicant had failed to submit certified judgment and conviction documents for his arrests on September 8, 2007 and November 9, 2009. The director also determined that the applicant had been convicted of a misdemeanor offense of willfully violate promise to appear in Case no. [REDACTED]

The certified court documents in Case no. [REDACTED] however, do not support the director's finding. The court documents clearly indicate that the court amended the complaint to add an infraction offense of section 853.7 PC. Therefore, the director's finding that this offense was treated as a misdemeanor will be withdrawn.

The evidence of record reflects that the applicant has one misdemeanor conviction (section 23152(b) VC). However, the applicant has failed to submit certified documentation regarding his arrests on September 8, 2007 and November 9, 2009. Although the document from the District Attorney's Office and the incident report [REDACTED] corroborate the arrest of September 8, 2007, the complaint assignment card is not certified and the incident report does not provide the final disposition. Likewise, incident report [REDACTED] does not state the final status of the case. The applicant has the burden to establish with affirmative evidence that the offenses were either dismissed or were in error.

The applicant is ineligible for TPS because of his failure to provide requested information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason 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.