



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: NOV 17 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On April 7, 2014, 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asserts that the applicant's larceny conviction is subject to the petty offense exception and that the TPS can only be withdrawn pursuant to section 244(c)(3) of the Act, and the subsequent commission of a disqualifying offense is not one of them. Counsel states that the applicant should be given the opportunity to file a waiver (family unity) instead of the withdrawal of TPS.

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 the following:

1. 

2.

To qualify for the petty offense exception, the maximum penalty possible for the crime of which an alien was convicted must not exceed imprisonment for one year, and the applicant must not be sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act. Virginia Code § 18.2-11(a) provides the punishment for conviction of a Class 1 misdemeanor as confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both. The court disposition indicates that the applicant was not sentenced to any imprisonment for the petit larceny conviction. The petit larceny offense qualifies for the petty offense exception and the applicant is therefore not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The “petty offense exception” is not a general amnesty for anyone convicted of misdemeanors; rather, it simply prevents findings of inadmissibility based on lone convictions meeting several criteria. This exception does not apply to the determination of the applicant’s eligibility for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant was found guilty and the judge ordered some form of penalty for the petit larceny conviction. The applicant, therefore, has been convicted of the misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

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).

The applicant is ineligible for TPS due to his two misdemeanor convictions. Counsel’s brief made on appeal has been considered. Nevertheless, the statute and the regulation make no provision for waiver of ineligibility, even for humanitarian reasons, for aliens who have been convicted of two or more misdemeanors. 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.