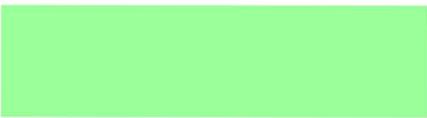




U.S. Citizenship
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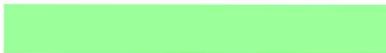


DATE:
OCT 08 2014

Office: VERMONT SERVICE CENTER

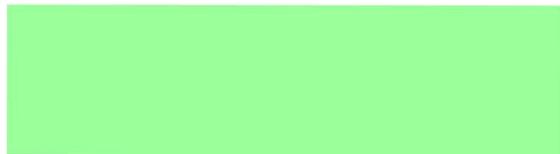


IN RE: Applicant:



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,

Ron Rosenberg,
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The case was remanded by the Administrative Appeals Office (AAO). The director subsequently withdrew Temporary Protected Status. The matter is again before the AAO 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 January 26, 2011, the director withdrew TPS as the applicant had been convicted of a felony in the United States. In our decision of August 20, 2012, it was determined that the court had authorized the state to prosecute the state jail felony theft offense as a Class A misdemeanor pursuant to Texas Penal Code 12.44(b); that the applicant pled guilty to that charge on November 20, 2008; and that the applicant had only one misdemeanor conviction (theft) as the remaining charge had been dismissed. The director's decision was withdrawn and the case was remanded in order for the applicant to be fingerprinted as the validity of her fingerprints had expired.

On September 19, 2013, the director withdraw TPS as the applicant failed to respond to a notice issued on June 6, 2013, which requested the applicant provide evidence from the court indicating that she had not been convicted of a felony offense. The director noted that in pertinent part, "[u]pon thorough inspection of the submitted court documents nowhere could be found any indication that the court authorized the state to prosecute the case as a Class A misdemeanor under Texas Penal Code 12.44(b)."

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).

"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 punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The record reflects that on May 14, 2008, the applicant was arrested by the [REDACTED] Police Department of Texas for theft property > \$1500 < \$20,000, and forgery government instrument. On May 16, 2008, the applicant was charged with a felony state jail felony of theft \$1500-\$20,000, and felony third degree of forgery government instrument. On November 20, 2008, the applicant pled guilty to the theft charge. Adjudication of guilt was deferred and the applicant was placed on community supervision for a period of two years and ordered to pay court costs. Subsequently, deferred adjudication of guilt was terminated, and the case was dismissed as the applicant had successfully completed community supervision.

On appeal from the decision of September 19, 2013, counsel indicates that the state felony offense of theft was prosecuted as a Class A misdemeanor pursuant to Texas Penal Code 12.44(b). Counsel argues that page 2 of the court record "DOES mention 12.44(b)." Counsel submits additional certified court documentation from the District Court of [REDACTED] County, Texas to support his argument.

A *de novo* review was conducted and it has been determined that we had misinterpreted the court document from the District Court of [REDACTED] County, Texas. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012) (recognizing AAO conducts *de novo* review).

On July 25, 2014, we sent a notice to the applicant informing him of the misinterpretation of the court document in our earlier decision of August 20, 2012. The applicant was advised that court document, in question, reads:

The following definitions *apply only if cited as a part of the disposition* above.

12.44(b) The court authorized the state to prosecute the case as a misdemeanor under Texas Penal Code section 12.44(b).

Deferred Adjudication of guilt-the court deferred further proceedings without entering a finding of guilt and placed the defendant on community supervision.

Deferred Adjudication of guilt terminated, defendant charged, case dismissed defendant completed community supervision and a dismissal and discharge may not be deemed a conviction (felony or misdemeanor) for the purposes of disqualification disabilities imposed by law for conviction of an offense.

[Emphasis Added].

The applicant was advised that while “Deferred Adjudication of Guilt” and “Deferred Adjudication Terminated” were cited in the court disposition, Texas Penal Code section 12.44(b) was not cited as part of the disposition. The applicant was further advised that based upon this information, we intend to affirm the director’s decision of September 19, 2013.

The applicant was granted thirty (30) days in which to submit a certified letter from the District Court or the State Attorney’s Office which addressed in detail whether the theft offense resulted in a state jail felony or a Class A misdemeanor conviction. To date, the applicant has not responded to our notice.

The regulation states that a felony is a crime “*punishable* by imprisonment for a term of more than one year, *regardless of the term . . . actually served.*” [Emphasis added.] The operative word is “punishable,” which indicates that a felony is defined under the regulation by the maximum imprisonment possible for the crime under Texas law, not the specific prison term meted out by the judge in a particular case. Under Texas law a state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days. Texas Penal Code 12.35. Therefore, we conclude that the theft offense is a felony as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to her felony conviction. 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 not met this burden.

ORDER: The appeal is dismissed