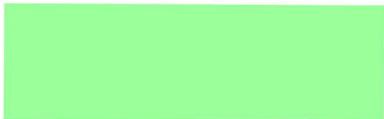




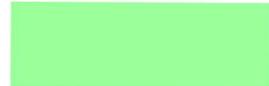
U.S. Citizenship  
and Immigration  
Services

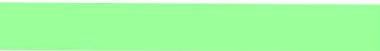
(b)(6)



DATE: **SEP 16 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

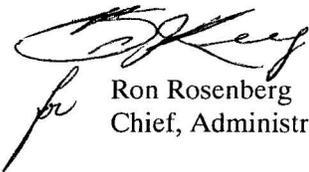
ON BEHALF OF APPLICANT: Self-represented

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,



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 September 12, 2013, the director withdrew TPS because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, the applicant requests that his TPS be reinstated as he has a family to support. The applicant asserts that his second driving under the influence arrest "was very unfair, I was not drunk, I had only had three beers. I new [sic] everything I was doing."

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.

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 reflects the applicant's criminal history in the state of Florida as follows:

1. On July 16, 2006, the applicant was arrested by the [REDACTED] Police Department for driving under the influence, a violation of Florida Statute 316.193.
2. On February 8, 2012, the applicant was arrested by the [REDACTED] Police Department for driving while license is suspended - 1<sup>st</sup> offense, a violation of Florida Statute 322.34(2)(a).
3. On January 1, 2013, the applicant was arrested by the [REDACTED] Police Department for driving under the influence (DUI), a violation of Florida Statute 316.193.

The record contains the following:

- Court documentation in Case no. [REDACTED] which indicates that on or about April 3, 2013, the applicant pled *nolo contendere* to and was adjudged guilty of violating Florida Statute 316.193, a misdemeanor. The applicant was placed on probation for 12 months, ordered to pay a fine and court costs, perform 50 hours of community service, and attend and complete a DUI substance abuse education course.
- Court documentation in Case no. [REDACTED] which indicates that on October 27, 2006, the applicant pled *nolo contendere* to and was adjudged guilty of violating Florida Statute 316.193(1), a misdemeanor. The applicant completed the court's requirements.
- Court documentation in Case no. [REDACTED] which indicates that on April 17, 2012, the applicant pled *nolo contendere* to violating Florida Statute 322.34(2), a misdemeanor. Adjudication of guilt was withheld. The applicant completed the court's requirements.

Florida law provides that:

- A violation of driving under the influence is punishable by up to six months incarceration and by a fine up to \$1000. *See* Florida Statute 316.193(2)(a).
- A first conviction of violating Florida Statute 322.34 is a misdemeanor of the second degree punishable by up to 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. *See* Florida Statutes 322.34(2)(a), 775.082(4) and 775.083(1).

In the instant case, the court documents submitted reflect that the applicant pled *nolo contendere* to each charge, and the judge ordered some form of punishment, penalty and/or restraint on the applicant's liberty to each charge. Therefore, for immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. However, we are not the appropriate forum to determine constitutional issues

involving an applicant's criminal record. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, we may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991). 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.