



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 16 2014

Office: VERMONT SERVICE CENTER

IN RE: Applicant:

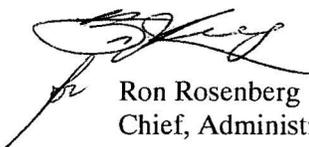
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 sustained.

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 October 23, 2013, the director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant provides the requested court documentation relating to his criminal record.

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

1. On March 19, 2002, the applicant was arrested in [REDACTED] for driving while intoxicated.
2. On June 2, 2006, the applicant was arrested in [REDACTED] for driving while license invalid.
3. On April 3, 2011, the applicant was arrested in [REDACTED] for a liquor violation.

The record contains:

- Certified court documentation from the [REDACTED] County District Clerk, which indicates that on March 26, 2002, the applicant pled guilty to driving while intoxicated – 1st offense, a violation of Texas Penal Code § 49.04, a Class B misdemeanor. The applicant received a suspended sentence of 180 days, and was ordered to pay a fine and was placed on probation for one year. Docket no. [REDACTED]
- Certified court documentation from the Justice of the Peace, [REDACTED] County, which indicates that on June 28, 2006, the applicant pled *nolo contendere* to and was adjudged guilty of no motor vehicle liability insurance, a misdemeanor. Docket no. [REDACTED]
- Certified Jail Booking Blotter from the [REDACTED] Police Department and court documentation from the [REDACTED] Municipal Court, which indicate that on April 3, 2011, the applicant was arrested for public intoxication, a violation of Texas Penal Code § 49.02, and criminal mischief, a violation of Texas Penal Code § 28.03, both Class C misdemeanors. On April 4, 2011, the applicant was adjudged guilty of each offense and was ordered to pay a fine and court costs for each conviction. Docket nos. [REDACTED]

Texas Penal Code, section 12.23, establishes that Class C misdemeanors are punishable by only fines not to exceed \$500.00. A violation of no motor vehicle liability insurance is punishable by only a fine. Texas Transportation Code 601.191. Therefore, the applicant's convictions that occurred on June 28, 2006 and on April 4, 2011, cannot be considered misdemeanors for immigration purposes.

The applicant has one misdemeanor conviction for violating Texas Penal Code § 49.04 and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). The applicant has overcome the sole basis for the withdrawal of TPS. There are no other known grounds of ineligibility. Therefore, the director's decision to withdraw TPS will, itself, be withdrawn and the applicant's TPS will be reinstated.

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 met this burden.

ORDER: The appeal is sustained.