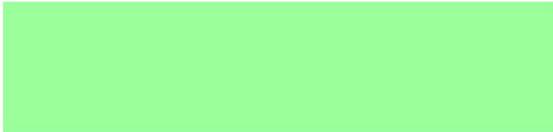
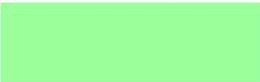


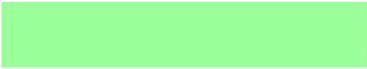


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 18 2015 Office: VERMONT SERVICE CENTER FILE: 

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,

A handwritten signature in cursive script, appearing to read "Michael Shumway".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The director withdrew the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record in the United States.

On appeal, the applicant submits the requested court documentation relating to his criminal record in the United States.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. 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.

On July 23, 2013, the director notified the applicant to submit certified judgment and conviction documents for all arrests in the United States. On August 15, 2013, the applicant submitted the following documents in response to the director's request: evidence of 50 hours of community service performed by the applicant through the [REDACTED] Florida Sheriff's office, a

certificate of completion of 12 hours of DUI counseling sessions through [REDACTED] Counseling services; and a certificate of completion of DUI program (Level 1) through the Metro Traffic School [REDACTED]. The applicant did not submit any court record relating to his May 15, 2005 arrest and subsequent conviction. Upon review of the evidence, the director determined that the documents submitted by the applicant in response were insufficient for the proper adjudication of the application and withdrew the applicant's TPS accordingly.¹

On appeal, the applicant asserts that he was arrested and convicted of one DUI offense. The applicant submits the following documents related to his arrest in the state of Florida on May 15, 2005 and the subsequent conviction: a certified copy of County Court Disposition Order in and for [REDACTED] Florida; a copy of Expiration of Probation from [REDACTED] Sheriff's Office, Department of Community Programs, Probation Division; a copy of Complaint Affidavit; a copy of Arrest Report from the Sheriff's Office, [REDACTED], Florida; and copies of Certificate of Completion for DUI Level 1 and DUI counselling session.

The record reflects that on May 15, 2005, the applicant was arrested by the [REDACTED] Florida and charged with the following offenses: driving under the Influence (DUI) of alcohol or drugs, first offense in violation of Florida State Statute (FL) 316.193, a 2nd degree misdemeanor; knowingly driving while license is suspended or revoked in violation of FL 322.34, a 2nd degree misdemeanor; and improper pass lane change in violation of FL 316.085, a noncriminal traffic infraction. The applicant pled no contest on all charges. On July 11, 2006, the County Court, for [REDACTED] Florida found the applicant guilty and convicted him of driving with blood alcohol level above 0.20. The court withheld adjudication for the charge of knowingly driving while license is suspended or revoked. The court dismissed the charge of improper pass lane change.

The court imposed punishment and/or penalties as follows: The applicant was placed on probation for six months, ordered to attend DUI school level 1, perform 50 hours of community service, attend 2 AA meetings per week, 10 days immobilization, ignition interlock for six months, \$500 fine plus court cost and other surcharges, and suspension of his driver's license for six months. Adjudication of guilt was withheld with respect to driving while license was suspended – a misdemeanor in the second degree. For this charge, the court required the applicant to pay court cost and other surcharges.

On appeal, the applicant indicated that he was never arrested and/or charged with two DUI. The applicant submitted copies of certified court dispositions relating to his arrest in the State of Florida showing compliance with penalties imposed by the court. The applicant's statement on appeal is noted. However, mere compliance with a court order neither alleviates the applicant of any convictions that had occurred nor dismisses any convictions.

¹ See Notice of Decision dated November 20, 2013. The applicant did not submit the requested court disposition indicating the nature and severity of the offenses and the final disposition of the charges against him.

In the instant case, the court documents submitted by the applicant on appeal shows that the applicant was convicted of two misdemeanor offenses and that the court imposed some form of punishment, penalty and/or restraint on the applicant's liberty. Although adjudication was withheld in the second offense, the court did impose punishment and or penalty in the form of court cost and other surcharges. The imposition of costs and surcharges in the criminal sentencing context constitute a form of "punishment" or "penalty" for purposes of establishing that an alien has been convicted within the meaning of section 101(a)(48)(A) of the Act. *See Matter of Arturo Cabrera*, 24 I&N Dec. 459, 462 (BIA 2008). Therefore, for immigration purposes, the applicant was convicted of the misdemeanor offense of driving while license is suspended or revoked within the meaning of section 101(a)(48)(A) of the Act.

Accordingly, the applicant has been convicted of two misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act. He is therefore ineligible for TPS. See 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 on this ground 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.