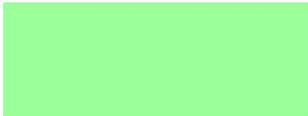


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

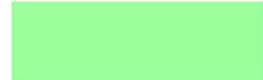


U.S. Citizenship
and Immigration
Services

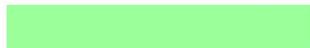


DATE: FEB 19 2015

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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant is a native and citizen of Nicaragua who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On December 6, 2013, the director withdrew TPS because the applicant had failed to submit 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.

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."

Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services. 8 C.F.R. § 244.9(a). To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The Federal Bureau of Investigation report reflects the applicant's criminal history in the state of Florida as follows:

1. On July 31, 2010, the applicant was arrested by the [REDACTED] Police Department for leaving the scene of an accident involving property damage, a violation of Florida Statute 316.061(1).
2. On December 22, 2011, the applicant was arrested under bench warrant by the [REDACTED] Police Department for driving while license suspended with knowledge, a violation of Florida Statute 322.34(2).

In response to a notice dated February 7, 2012, which requested the final disposition of his arrest on July 31, 2010, the applicant submitted court documentation from the County Court of the Eleventh Judicial Circuit in and for [REDACTED] Florida, which indicated that he was charged with two counts of leaving scene of an accident involving property damage. On August 26, 2010, the applicant pled guilty to and was adjudged guilty of one count of leaving the scene of crash involving damage to property, a misdemeanor of the second degree. The applicant was ordered to pay a fine/court cost and attend traffic school. Case no. [REDACTED]. The remaining count was dismissed in Case no. [REDACTED].

On July 24, 2013, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the court regarding his arrest on December 22, 2011. In response, the applicant asserted that this case was dismissed and that he was providing evidence to support his assertion. The evidence submitted, however, related to his arrest on July 31, 2010.

The director determined that the applicant had failed to submit requested court documentation relating to his arrest on December 22, 2011 that was necessary for the proper adjudication of the application. Accordingly, the director withdrew TPS.

On appeal, the applicant indicates that he is attaching “new evidence provided by the [REDACTED] Police Department and the Traffic Division of the County Court for the Eleventh Judicial Circuit in and for [REDACTED] Florida” relating to his criminal record.

On December 3, 2014, we sent a notice informing the applicant that the record of proceedings only contained a statement from him indicating that the charge of knowingly driving while license is suspended/revoked in Case no. [REDACTED] had been dismissed. The applicant was advised that his statement alone would not overcome the director’s finding. The applicant was granted 30 days in which to submit either certified complete court proceedings or a certified letter from the State/District Attorney’s Office detailing the final outcome of his arrest on December 22, 2011 for violating Florida Statute 314.34(2).

The applicant, in response, submits a certified complaint/arrest affidavit and jail booking record from the [REDACTED] Police Department and certified court documentation in Case no. [REDACTED] from the County Court for the Eleventh Judicial Circuit in and for [REDACTED] Florida relating to the applicant’s arrest on December 22, 2011. The court



documentation indicates that the applicant pled not guilty to violating Florida Statute 314.34(2), and that the case was dismissed on January 26, 2012.

The applicant's failure to submit the requested disposition for his arrest on December 22, 2011 has been overcome on appeal. The evidence of record reflects that the applicant has one misdemeanor conviction, 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 regulations in 8 C.F.R. § 244.4(a). Therefore, the director's decision to withdraw TPS will 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.