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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JUL 29 2015

[Redacted]

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. 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. § 1254a. On September 23, 2014, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserted that the applicant's final disposition of October 16, 2013 has been disputed, and that the applicant has applied for a correction to his criminal record. Counsel also contends that neither conviction meets the definition of a misdemeanor as cited in the statute and regulation. Counsel indicated on the appeal form that a brief and/or additional evidence would be filed within 30 days.¹ To date, however, we have not received any additional documents. Therefore, the record must be considered complete. The record does not contain any indication that the applicant's final disposition of October 16, 2013 has been overturned.

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. 8 C.F.R. § 244.1. 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. *Id.*

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.

In a Request for Evidence dated December 20, 2013, the applicant was requested to provide the final dispositions (plea, sentence, probation, dismissal, etc.) of every charge against him. In response, the applicant submitted:

¹ Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to the AAO.

1. Certified court documentation from the Municipal Court of the City of [REDACTED] Georgia, which indicates that on October 16, 2013, the applicant pled guilty to and was adjudged guilty of violating Georgia Code Ann. § 40-5-32, expired driver's license. The applicant was placed on probation for twelve months and ordered to pay a fine and court costs. A conviction for this offense constitutes a misdemeanor for immigration purposes.
2. Certified court documentation from the Municipal Court of [REDACTED] Georgia, which indicates that on September 19, 2010, the applicant pled guilty to Georgia Code Ann. § 40-5-20(a), driving without a valid license. The penalty/punishment for violating this misdemeanor offense was not indicated on the court documentation.
3. A record of disposition from [REDACTED] County Recorders Court of [REDACTED] Georgia, which indicates that the applicant pled guilty to expired license and paid a corresponding fine on March 17, 2014. The section of law under which the applicant was convicted and date of conviction was not indicated on the court documentation.

Effective July 1, 2008, any person who violates subsection Georgia Code section 40-5-20(a) shall be punished as provided in Georgia Code section 40-5-121.² Georgia Code section 40-50-121(a) reads, in part:

Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00

As the court documentation fails to list the punishment/penalty the applicant received for violating the misdemeanor offense of driving without a license, we cannot find the applicant to have been convicted of a misdemeanor within the meaning of section 101(a)(48)(A) of the Act. Further, the section of law and conviction date corresponding to the applicant's guilty plea for an expired license is not indicated on his [REDACTED] County record of disposition.

The applicant remains ineligible for TPS due to his failure to provide the information necessary for the adjudication of his application, namely, the complete disposition of his September 19,

² See 2008 Georgia Laws Act 778 (S.B. 350).

[REDACTED]

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2010 conviction and expired license conviction from the [REDACTED] record of disposition, dated March 17, 2014. 8 C.F.R. § 244.9(a). Consequently, the applicant's TPS remains withdrawn.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.