



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 12 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [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:

NO REPRESENTATIVE OF RECORD

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. 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. § 1254a. On November 6, 2013, the acting center director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant apologizes for his previous criminal actions and requests that his application be reconsidered. The applicant states that he has successfully completed the terms of probation and resubmits the court documents relating to his criminal history.

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.

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 record contains the following:

1. Certified court documentation from the Circuit Court in and for ██████████ County, Florida indicating that on ██████████ 2006, the applicant entered a plea of nolo



contendere and was adjudged guilty of driving under the influence of alcohol or drugs, a violation of Florida Statute 316.193(1), a misdemeanor of the second degree. The applicant was placed on probation for 12 months, ordered to complete a substance abuse course, pay a fine and court costs, and perform 50 hours of community service.

2. Court documentation from the Circuit Court for [REDACTED] of Kentucky indicating that on [REDACTED] 2012, the applicant was convicted of driving under the influence/alcohol/drugs/etc., (aggravated circumstance), a violation of KRS 189A.010(5a), a Class B misdemeanor. The applicant was ordered to pay a fine and court costs.

The applicant is ineligible for TPS due to his two 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 concerning his satisfactory completion of court obligations have been considered. However, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the acting center director's decision to withdraw TPS will be affirmed.

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.