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



U.S. Citizenship
and Immigration
Services

[REDACTED]

M2

DATE:

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

SEP 30 2011

IN RE:

Applicant: [REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant is a native and citizen of Honduras who is seeking 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 it was determined that the applicant had been convicted of a felony in the United States.

On appeal, counsel asserts that the applicant was not convicted of a felony and is entitled to TPS.

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.

"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.

The Federal Bureau of Investigation report dated August 17, 2010, reflects that on [REDACTED] 2008, the applicant was arrested by the Prince William County Police Department (Virginia) for sodomy: non-forcible and contribute to delinquency of minor.

In response to the Notice of Intent to Withdraw TPS issued on December 8, 2010, which requested the certified judgment and conviction documents from the courts for all arrests, the applicant submitted court documentation for the arrest on [REDACTED] 2008.

The court documentation in Case no. [REDACTED] from the Juvenile and Domestic Relations District Court, Commonwealth of Virginia, indicates that the applicant was charged with sodomy: non-forcible. The complaint was amended to sexual battery, a violation of Virginia

Code section 18.2-67.4. On [REDACTED] 2009, the applicant pled guilty to and was found guilty of violating Virginia Code section 18.2-67.4, a Class 1 misdemeanor. The applicant was sentenced to serve a jail sentence of six months, which was suspended for one year. The applicant was placed on probation for one year and ordered to pay court costs of \$62.

The court documentation in Case no [REDACTED] indicates that a *nolle prosequi* was entered for the charge of contribute to delinquency of minor.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The maximum punishment for a Class 1 misdemeanor is confinement in jail for not more than 12 months. See Virginia Code section 18.2-11(a).

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

While the AAO does not condone the applicant's actions, the misdemeanor conviction qualifies for the petty offense exception as the maximum penalty possible for the crime of which the applicant was convicted did not exceed imprisonment for one year and he was not sentenced to a term of imprisonment in excess of six months.

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). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

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.