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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

MA



FILE: [REDACTED]  
[LIN 99 224 50941]

OFFICE: CHICAGO

DATE: MAR 10 2005

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 district director denied the application because the applicant had been convicted of a felony or two or more misdemeanors committed in the United States.

On appeal, the applicant submits a statement and resubmits copies of court documents relating to his arrests.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or
    - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status 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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: 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 such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*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.

The record reveals the following offenses:

- (1) On October 1, 1995, in Lake County, Illinois, [REDACTED] the applicant was arrested and charged with domestic battery/bodily harm. On October 27, 1995, the court entered a "nolle prossed" on the case.
- (2) On May 24, 1998, in Waukegan, Illinois, the applicant was arrested for driving under the influence of alcohol. On August 24, 1998, in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, [REDACTED] the applicant was convicted of the amended charge of reckless driving, a misdemeanor. He was placed under court supervision for a period of one year, fined \$500, and ordered to attend and complete within 30 days a drug alcohol evaluation and program.
- (3) On June 12, 2001, in Waukegan, Illinois, the applicant was arrested for Count 1, driving under the influence of alcohol, a misdemeanor; and Count 2, driving under the influence/breath alcohol level above .08%, a misdemeanor. On October 26, 2001, in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, [REDACTED] the applicant was convicted of Count 1. He was placed on probation for a period of one year, ordered to pay the total of \$1650 in fines and costs, spend 4 days in jail, and attend and complete D.U.I. Project and aftercare. Count 2 was dismissed.

On appeal, the applicant asserts that he appeared at all the court hearings and he had paid the total amount of fines requested.

Despite the applicant's assertion, the applicant remains convicted of Nos. 2 and 3 above. Accordingly, applicant is ineligible for TPS due to his two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the district director's decision to deny the application for this reason will be affirmed.

The record of proceeding contains Form I-200, Warrant for Arrest of Alien, issued at Chicago, Illinois, on November 2, 2004, based on the applicant's entry into the United States without inspection on August 23, 1992, near San Ysidro, California. It is noted that the applicant is scheduled for a Master hearing before the Immigration Court on August 2, 2005.

An alien applying for temporary protected status 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.