

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 25 2005
[WAC 99 133 53264]

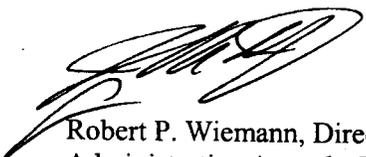
IN RE: Applicant: [REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 director denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

On appeal, the applicant submits a statement and additional evidence.

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 March 28, 1991, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date March 16, 1991), the applicant was indicted for driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor. On April 11, 1991, the court ordered the complaint amended to add Count 2, reckless driving/no injury, 23103 VC, a misdemeanor. The applicant was subsequently convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he pays a fine of \$240 or serve 8 days in "Calif Transportation." Count 1 was dismissed. Because the applicant violated the terms of his probation, on August 9, 1991, the probation was revoked pending a hearing. On August 9, 1991, the court found the applicant in violation of probation, and his probation was subsequently reinstated on the same terms and conditions, with modification that the applicant serve 5 days in the county jail.
- (2) On August 26, 1991, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date July 25, 1991), the applicant was indicted for theft of property, 484(a) PC, a misdemeanor. On September 6, 1991, the applicant was convicted of the offense. He was placed on probation for a period of 12 months, ordered to pay \$352.50 in fines and costs, and spend one day in the county jail. Because the applicant violated the terms of his probation, a bench warrant was issued on January 6, 1992. On September 3, 1998, the court found the applicant in violation of probation, and his probation was subsequently reinstated on the same terms and conditions with modification that he perform 10 days of "CALTRANS."
- (3) On December 9, 1995, in Los Angeles, California, the applicant was arrested and charged with spousal abuse, 273.5(a) PC. On December 11, 1995, prosecution was rejected on the case.
- (4) On July 31, 1998, in Los Angeles, California, the applicant was arrested and charged with failure to appear, 40508(a) VC, a misdemeanor. The final disposition of this arrest is not

reflected in the record. Nor is it clear whether this arrest relates to any of the arrests in Nos. 1 and 2 above.

On appeal, the applicant asserts that the two misdemeanors were committed over 10 years ago. He submits orders of the court dated December 19, 2001, indicating that because the applicant had fulfilled the conditions of his probation, his convictions (Nos. 1 and 2 above) were set aside and the cases were dismissed pursuant to 1203.4 PC.

The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses (Nos. 1 and 2 above) despite the expungement of the convictions.

Accordingly, the 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 director's decision to deny the application for this reason will be affirmed.

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.