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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 07 2006
[WAC 99 100 51747]

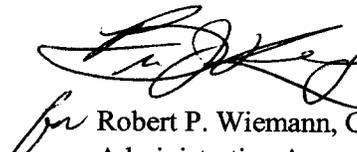
IN RE: Applicant: [REDACTED]

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 California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be a native and citizen of Honduras who was granted TPS on January 7, 2000. The director subsequently withdrew the applicant's status on October 6, 2005, when it was determined that the applicant had been convicted of two or more misdemeanors or a felony.

On appeal, the applicant states:

(T)the case was dismissed pursuant to California Penal Code section 1210.1. Pursuant to the case of Lujan-Armendariz v. INS (2001) 222 F3d 728, this dismissal removes the conviction for purposes of immigration laws. This is a Ninth Circuit Court of Appeals case and I reside in the jurisdiction of the Ninth Circuit Court of Appeals, therefore, this case applies to my application for TPS.

It is noted that the applicant appears to be represented by James C. Lopez, who identified himself as an attorney, and who also signed the Form I-821 as the person who prepared the application. However, the record does not contain a Form G-28, Notice of Entry of Appearance of Attorney or Representative, signed by the applicant authorizing Mr. Lopez to represent him before Citizenship and Immigration Services (CIS) in this proceeding. Therefore, the decision will be provided only to the applicant.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

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 Federal Bureau of Investigation fingerprint results report shows that on June 29, 2000 in San Jose, California, [REDACTED] the applicant was arrested for one count of sexual battery. The report also shows that on October 13, 2000 in San Jose, California, [REDACTED], he was again arrested and charged with one count of sexual battery. The applicant has not forwarded court dispositions for his arrests on those dates.

Additionally, the record contain a document from the Clerk of the Superior Court of California, County of Santa Clara, entitled "Proceedings Sentence, Probation Order" under [REDACTED] that reflects the following concerning violations that occurred on February 25, 2000 (emphasis supplied):

On September 26, 2000, the applicant was found guilty by a Judge of the Superior Court of California, County of Santa Clara, of committing a battery which is a willful and unlawful use of force or violence upon the person of another under sections PC 242/243 of the California Penal Code, a misdemeanor. He was also convicted of solicitation under section PC 647 of the California Penal Code, a misdemeanor.

The record also shows that the applicant filed a petition for modification or change of the terms of his probation and order under section PC 1203.A and that the petition was granted concerning his violation of PC 242/243 under Court No. [REDACTED] after his probation terminated on September 26, 2003.

On appeal, the applicant argues this dismissal removes the conviction for purposes of immigration laws. It is noted that the order of the Judge of the Superior Court of California for the County of Santa Clara, dated May 24, 2005, does not relate to his second misdemeanor for solicitation under section PC 647 of the California Penal Code.

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, for both of the misdemeanor offenses listed above despite the dismissal of the one of the convictions.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Also, he failed to submit the final court dispositions for his arrests on June 29, 2000, and on October 13, 2000. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status is affirmed.

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the above requirements 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.