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20 Massachusetts Ave., N.W., Rm. 3000  
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**U.S. Citizenship  
and Immigration  
Services**



**M1**

**DEC 29 2006**

FILE: [REDACTED]  
[WAC 05 062 74229]  
[SRC 99 250 53360]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

IN RE: Applicant:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) application was withdrawn and the re-registration application was denied by the Director, California Service Center.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

The applicant claims to be a native and citizen of Honduras who was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on July 6, 2000.

The director withdrew the TPS and denied the re-registration application because the applicant failed to respond to the Notice of Intent to Withdraw TPS mailed to him by the U.S. Citizenship and Immigration Services (CIS) instructing him to submit evidence of the final disposition of several criminal arrests.

On appeal, the applicant submits the court disposition of all the criminal arrests.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time, if 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).

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On October 29, 2000, he was arrested for possession of cocaine by the Metro-Dade Police Department. The record further shows that he pleaded guilty to Possession of Cocaine, a felony, on December 22, 2000 (Case [REDACTED]).
- (2) On February 1, 2001, he was arrested for vehicle theft, a felony, by the Miami Police Department.
- (3) On February 17, 2002, he was arrested for Drinking in Public, Driving Under the Influence (DUI), No Valid Driver's License, misdemeanors, Resisting an Officer by the Metro-Dade Police Department (Case [REDACTED]). He pled *nolo contendere* to DUI on March 15, 2002.

- (4) On November 2, 2002, he was arrested for No Valid Driver's License, a misdemeanor, by the Metro-Dade Police Department.
- (5) On July 5, 2003, he was arrested for No Valid Driver's License and Driving Under the Influence, misdemeanors, by the Miami Police Department. He pled *nolo contendere* to Driving with A Suspended License on August 7, 2003 (Case [REDACTED]).
- (6) On November 9, 2003, he was arrested for Driving while License Suspended, a misdemeanor, by the Miami Police Department (Case [REDACTED]). He pled guilty on November 10, 2003.
- (7) On February 19, 2006, he was arrested for Driving while License Suspended, a misdemeanor, by the Miami Beach Police Department.

On appeal, the applicant claims that he is a different person now and asks to be given a new opportunity. He also submits several court dispositions for some of his criminal arrests. These documents confirm the criminal record detailed above.

The applicant's argument that he is now a different person does not mitigate his past criminal offenses.

The applicant is ineligible for TPS due to his record of at least one felony conviction and at least three 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 withdraw the applicant's TPS and to deny the re-registration application for this reason will be affirmed.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under 212(a)(2)(A)(i)(II) of the Act for his drug conviction. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.