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**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 05 2006

[WAC 99 120 51522]

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:



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.


for Robert P. Wiemann, Chief
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 record indicates that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 120 51522. That application was approved on February 9, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 12, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on June 28, 2005, because the applicant had failed to submit requested court documentation relating to his criminal record.

In this case, however, the director should have withdrawn the applicant's TPS status rather than to deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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 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.

Based on the Federal Bureau of Investigation fingerprint results report, updated on February 3, 2005, the applicant was requested on March 2, 2005, to submit the final court disposition of his arrest in California on

March 18, 2001. He was advised that the "final court disposition must be obtained from the court, not from the police station." In response, the applicant submitted a copy of the police report regarding the March 18, 2001 arrest. Therefore, the director denied the application.

On appeal, counsel submits the requested court disposition.

The record indicates that on March 20, 2001, in the Superior Court of California, County of Los Angeles, Case No. 1BU0627 (arrest date March 18, 2001), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On May 4, 2001, the applicant was convicted of Counts 2 and 3. He was placed on probation for a period of 3 years, ordered to pay a total of \$1,362 in fines and costs, perform 40 hours of "Cal Trans," enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, driving was restricted for 90 days, and attend at least 2 sessions NA/AA meetings per week-total 52. Count 1 was dismissed.

The applicant was convicted of two misdemeanors, detailed above; therefore, he is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the applicant's temporary protected status will be withdrawn.

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.