U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] OFFICE: DENVER Date: SEP 06 2006
[LIN 99 129 51681]

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:

[redacted]

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.

Cindy M. Simcox for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the District Director, Denver, Colorado, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on February 24, 2000.

The district director subsequently withdrew the applicant's TPS on May 7, 2003, when it was determined that the applicant was ineligible for TPS because he had been convicted of a felony or two or more misdemeanors committed in the United States, and because the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, for misrepresenting a material fact to gain a benefit under the Immigration and Nationality Act.

The district 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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

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.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), states, in part:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects the following:

1. On June 2, 1989, in the Municipal Court of California, County of San Diego, San Diego Judicial District, Case (arrest date May 7, 1989), the applicant was indicted for Count 1, driving under the influence of alcohol or drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b), a misdemeanor. On June 7, 1989, the applicant was convicted of both counts. He was placed on probation for a period of 3 years, and ordered to pay a total of $660 in fines and costs.

2. In an amended complaint filed on June 7, 1989 (Case No. 1 above), the applicant was indicted for operating a vehicle in willful disregard of safety of persons and property, in violation of 23103(a) VC, pursuant to 23103.5 VC, a misdemeanor. On June 7, 1989, the applicant was convicted of the offense. He was placed on probation for a period of 3 years, and his driver's license was suspended.

3. On November 16, 1989, in the Municipal Court of California, County of San Diego, San Diego Judicial District, Case (arrest date October 22, 1989), the applicant was indicted for Count 1, driving under the influence of alcohol or drug, with prior, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, with prior, 23152(b), a misdemeanor. On January 2, 1990, the applicant was convicted of Count 1. He was placed on probation for a period of 5 years, ordered to pay a total of $1,032 in fines and costs, his driver's license was restricted for 365 days, and he was ordered to spend 48 hours in jail. The final disposition as to Count 2 is not reflected on the record.

4. The applicant indicated on his TPS re-registration, signed and dated on June 25, 2002, that he was arrested in 1998 for domestic violation, and in 1990 for stolen property. The final court disposition of these arrests is not included in the record of proceeding.

The district director noted that the applicant submitted his original application for TPS stating he had never been arrested/convicted. The district director, therefore, determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, for misrepresenting a material fact to gain a benefit under the Immigration and Nationality Act. The district director withdrew the application on May 7, 2003.

On appeal, counsel asserts that the applicant should be allowed an exception to inadmissibility under section 212(a)(2)(A)(ii) of the Act, for his conviction of two non-CIMT (crimes involving moral turpitude) petty crimes for driving-related misdemeanor offenses. Counsel further asserts that the applicant did not intentionally misrepresent a material fact to gain an immigration benefit. She explains that a Notary Public prepared the applicant's TPS application, and due to the applicant's lack of English reading skills, he was unable to verify the facts on the form prior to signing; therefore, he relied on the Notary Public who prepared his TPS application. Counsel states that when questioned verbally at the interview [on April 16, 2003], the applicant did fully disclose his arrests, and of two other instances where he was arrested but charges were not filed, and that he subsequently provided court dispositions for these charges.

The record in this case shows that the applicant was arrested and subsequently convicted of at least four misdemeanors prior to the filing of the TPS application on February 22, 1999. The applicant failed to disclose on Part 4 of the TPS application that he had been arrested and convicted. Only after the applicant's fingerprint results were received from the Federal Bureau of Investigation on January 31, 2003, was Citizenship and Immigration Services aware of the applicant's arrests and convictions. Despite counsel's assertions on appeal, it

is concluded that the district director is correct in his conclusion that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Additionally, counsel's assertion that the applicant should be allowed an exception to inadmissibility under section 212(a)(2)(A)(ii) of the Act for his conviction of two non-CIMT petty crimes is without merit. As provided in section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), an alien shall not be eligible for TPS if he has been convicted of any felony or two or more misdemeanors committed in the United States.

The applicant is ineligible for TPS due to his record of at least four misdemeanor convictions, detailed in Nos. 1, 2, and 3 above, and because he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Section 244(c)(2)(B)(i) of the Act and 244(c)(1)(A)(ii) of the Act. While a waiver is available to an alien found inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act, contrary to counsel's assertions, there is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States under section 244 of the Act. Consequently, the district director's decision to withdraw the applicant's TPS will be affirmed.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.