

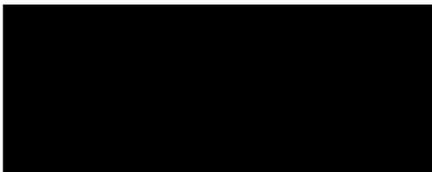
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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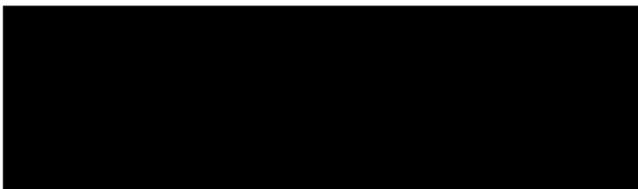
Office: TEXAS SERVICE CENTER

Date: **SEP 26 2006**

IN RE: Applicant: [REDACTED]

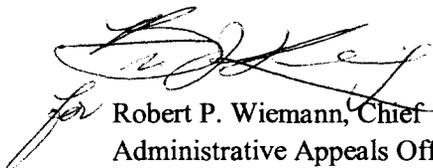
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Texas Service Center (TSC), 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 not submitted court dispositions for his two driving under the influence (DUI) arrests.

On appeal, counsel states that the applicant complied with the director's request by sending all court and police records via certified mail within the specified time limit. Counsel argues that the applicant's two DUI arrests, occurring in 1995 and 1999, were traffic violations and not misdemeanors.

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 record reflects the following offenses:

- (1) On February 14, 1996, the applicant was found guilty of driving under the influence, (Statute 316.193), by a Judge of the Traffic Division in the County Court in and for Dade County Court in the State of Florida, a misdemeanor.
- (2) On October 25, 1999, the applicant was found guilty of driving under the influence, (Statute 316.193), by a Judge of the Traffic Division in the County Court in and for Dade County Court in the State of Florida, a misdemeanor.

Counsel argues that the applicant’s two DUI arrests, occurring in 1995 and 1999, were traffic violations and not misdemeanors. As stated above, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. Chapter 316.193 of Title XXIII, (Motor Vehicles), of the State Uniform Traffic Control statutes of the State of Florida, provides for a term of imprisonment for not more than 6 months for a first conviction and not more than 9 months for a second conviction for driving under the

influence. As the DUI crimes that the applicant committed was punishable by a maximum term of more than five days and one year or less each, they are deemed misdemeanors in this proceeding.

The applicant is ineligible for TPS due to his record of two misdemeanors, 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 is 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.