

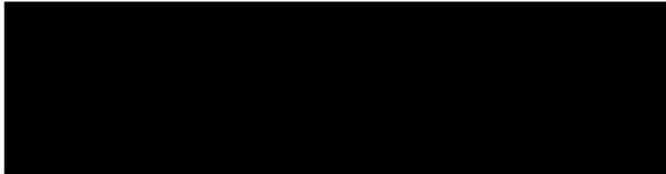


U.S. Citizenship  
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Services

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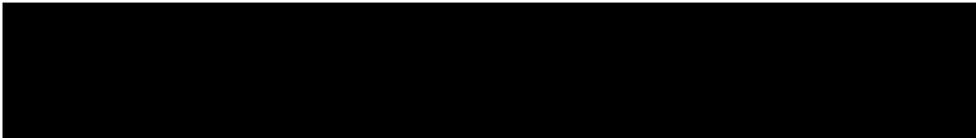
FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 23 2007

[WAC 05 097 80849]  
[WAC 99 199 53663]

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 claims to be a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on March 13, 2000 [receipt number WAC 99 199 53663]. The director subsequently withdrew the applicant's TPS status on August 15, 2006, when it was determined that the applicant had been convicted of a felony or two or more misdemeanor offenses. Within the same decision, the director denied the applicant's re-registration application, filed on January 5, 2005, under receipt number WAC 05 097 80849, also because the applicant had been convicted of a felony or two or more misdemeanor offenses.

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

On appeal, counsel submits a statement.

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.

The record indicates that on March 22, 2000, in the Superior Court of California, County of Los Angeles, [REDACTED] (arrest date December 22, 1999), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, driving with suspended license. On April 3, 2000, the applicant entered a plea of nolo contendere to Counts 2 and 3, and the court found the applicant guilty as to both Counts 2 and 3. He was placed on probation for a period of 3 years, ordered to pay \$1,077 in fines and costs, to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days as to Count 2. He was

ordered to pay a fine of \$300 plus a state penalty fund assessment of \$510 or serve 10 days in the county jail as to Count 3. Count 1 was dismissed.

On appeal, counsel asserts that the applicant was arrested and charged with DUI and driving with a suspended driver's license; however, the applicant's license was not suspended at the time of his arrest, and he was wrongly convicted of that misdemeanor. Counsel further asserts that *Matter of S R*, 7 I&N Dec. 495 (BIA 1957), applies in principle to the applicant's situation even though it involved deportation proceedings under a different section of the law. This assertion of counsel is not persuasive. The alien, in *Matter of S R*, was found inadmissible to the United States, pursuant to the former section 212(a)(2)(a)(9) of the Act [now, section 212(a)(2)(A)(I) of the Act], and deportable [removable] under section 241(a)(1) of the Act because he had been convicted or admits having committed more than one offense involving moral turpitude, and that the expungement of the record of conviction did not completely obliterate the fact that the unlawful acts occurred. The applicant, in this case, was not convicted of crimes involving moral turpitude.

Additionally, the court record clearly shows that the applicant was convicted of "driving with suspended license." Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

Accordingly, the applicant is ineligible for TPS due to his two misdemeanor convictions. 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 will be affirmed.

It is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.