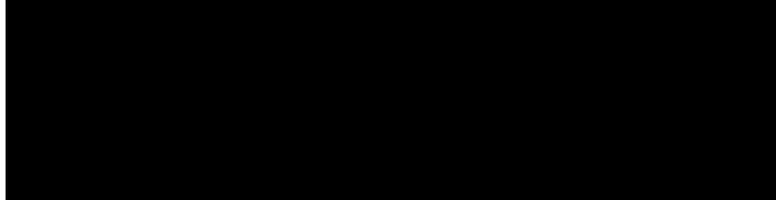




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **APR 23 2007**

[WAC 99 193 53250]
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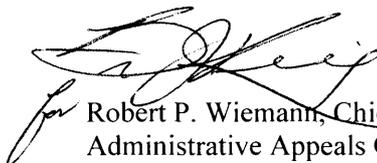
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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.


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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on March 16, 2000. The director subsequently withdrew the applicant's TPS status on August 2, 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 31, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 147 77878, 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, the applicant submits a statement and additional evidence.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on April 22, 2005, to submit the final court dispositions of all of her arrests, including the arrests listed on

the FBI report. In response, the applicant submitted court records relating to a drug arrest on November 7, 2002. A notice of intent to withdraw TPS was subsequently issued on September 23, 2005, requesting that the applicant submit evidence of the final court disposition of her arrests, and evidence that she had completed the required program and that the charge was dismissed. In response, the applicant submitted additional court documents.

The record reveals the following:

- (1) On November 12, 2002, in the Superior Court of the State of California, County of Orange, Case No. [REDACTED] (arrest date November 7, 2002), the applicant was indicted for possession of a controlled substance, H&S 11377(a), a felony. On February 13, 2003, the applicant entered a plea of guilty to the felony offense, the court accepted the applicant's plea, granted deferred entry of judgment, and ordered that the applicant enroll in a Drug Program pursuant to Penal Code (PC) 1000. Based on the applicant's failure to comply with court orders, proceedings pursuant to PC 1000 were ordered terminated. Deferred entry of judgment, PC 1000, was reinstated on February 27, 2003; however, it was again ordered terminated on March 26, 2003. On June 27, 2003, the applicant was sentenced to 3 years of formal probation, ordered to pay \$200 in restitution fine, and to complete drug treatment pursuant to PC 1210.

The record, in this case, shows that the applicant entered a plea of guilty to the drug offense, and the judge accepted the plea and ordered some form of punishment (probation, restitution fine, and drug treatment program). Additionally, the court subsequently terminated deferred entry of judgment. Therefore, for immigration purposes, the applicant was convicted of the felony offense within the meaning of section 101(a)(48)(A) of the Act.

- (2) The FBI report indicates that on February 7, 2003, in Santa Ana, California, the applicant was arrested for burglary, 459 PC. The final court disposition of this arrest is not contained in the record.
- (3) CIS data base indicates that on February 11, 2003, in Santa Ana, California, the applicant was arrested for tampering with vehicle, 10852 VC, a misdemeanor (under Case No. [REDACTED]). The applicant submitted the "Minute Order" of the Superior Court of the State of California, County of Orange, Case No. [REDACTED], indicating that on February 11, 2003, the applicant "pleads guilty to all counts." She was sentenced to serve 7 days in the county jail, and ordered to pay \$100 restitution fine. The Minute Order indicates that Case Number [REDACTED] was to be kept "with companion cases(s) [REDACTED]. However, the court documents relating to Case No. [REDACTED] are not contained in the record. It is not clear whether this case relates to No. 2 above.

On appeal, the applicant submits documents from the Superior Court of the State of California, County of Orange, indicating that on August 29, 2006, the applicant's felony drug conviction [H&S 11377(a), No. 1 above] was reduced to a misdemeanor, the applicant's motion to vacate and set aside plea and vacate judgment was granted, and the case was dismissed, because the applicant had successfully completed drug treatment and complied with the conditions of probation. Also on August 29, 2006, the court set aside the applicant's guilty plea under Case No. [REDACTED] (No. 3 above), a plea of not guilty was entered, and the case was dismissed.

The Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. §

1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. The applicant, therefore, remains convicted of the felony offense (No. 1 above) and the misdemeanor offense (No. 3 above) despite the expungements of the convictions.

The applicant is ineligible for TPS due to her felony conviction [No. 1 above], because she failed to provide the final court disposition of her arrest(s) [No. 2 above, and Case No. [REDACTED] noted in No. 3 above], and because she is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on her drug-related conviction. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to withdraw the applicant's TPS will be 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.