

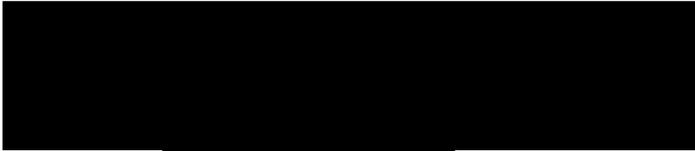


U.S. Citizenship  
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FILE: [REDACTED]  
[WAC 99 198 52337]

OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 23 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on June 12, 2000. The director subsequently withdrew the applicant's TPS on August 1, 2006, when it was determined that the applicant had been convicted of 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).

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.

On March 10, 2005, the applicant was requested to submit final court dispositions of all of his arrests, including his arrests listed in the Federal Bureau of Investigation fingerprint results report. The applicant responded by submitting the court dispositions of his arrests listed below. It is noted that on July 26, 2005, the director denied the TPS re-registration application filed on January 7, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 099 77276. While the director should have withdrawn the applicant's TPS status rather than deny the re-registration application, the director ultimately withdrew the initial TPS application on August 1, 2006.

The record reveals the following offenses:

- (1) On September 3, 1999, in the Municipal Court of L.A.-Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date September 1, 1999), the applicant was indicted for Count 1, battery, 242-243(b) PC, a misdemeanor; and Count 2, unlicensed driver, 12500(a) VC, a misdemeanor. On September 3, 1999, the applicant was convicted of Count 1. He

was placed on probation for a period of 24 months under the condition that he serve 3 days in the county jail, and ordered to pay \$177.75 in fines and costs. Count 2 was dismissed.

- (2) On August 27, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date May 22, 2001), the applicant was indicted for Count 1, driving with suspended license, 14601(a) VC, a misdemeanor. On August 30, 2001, the court ordered the complaint amended by interlineation by adding violation of 12500(a) VC, unlicensed driver, an infraction, as to Count 2.<sup>1</sup> The court found the applicant guilty as to Count 2, and he was ordered to pay \$316 in fines and costs or 43 hours of community service. Count 1 was dismissed.
- (3) On September 27, 2002, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date July 29, 2002), the applicant was indicted for Count 1, driving with suspended license, 14601(a) VC, a misdemeanor; Count 2, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 3, no proof of car insurance, 16028(a) VC, an infraction. On December 10, 2002, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, and ordered to pay \$966 in fines and costs. Counts 1 and 3 were dismissed.
- (4) On June 16, 2004, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date February 15, 2004), the applicant was indicted for Count 1, driving with suspended license, 14601.1(a) VC, a misdemeanor; and Count 2, unlicensed driver, 12500(a) VC, a misdemeanor. On February 3, 2005, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months, and ordered to pay \$901 in fines and costs. Count 2 was dismissed.

On appeal, the applicant asserts that the judges had stated that the Vehicle Code cases "would turn into infractions after a couple of years;" however, the court would not give him copies of the cases because his I.D. had expired. He requests that he granted 60 days to get his I.D. updated and to obtain his criminal records. To date, the file contains no further response from the applicant.

However, even if the misdemeanor convictions were to be reduced to infractions, the applicant would remain ineligible for TPS. the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined 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 is ineligible for TPS due to his record of at least three 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.

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.

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<sup>1</sup> According to section 40000.11 VC, a violation of section 12500(a), relating to unlicensed drivers, "is a misdemeanor, and not an infraction." It appears that the court, during the applicant's arraignment, declared the offense as an infraction.