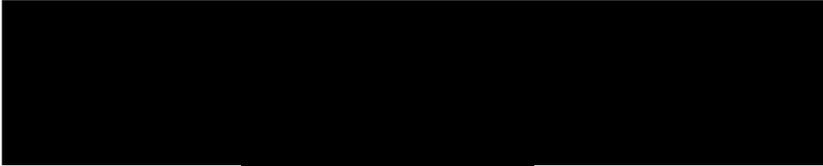


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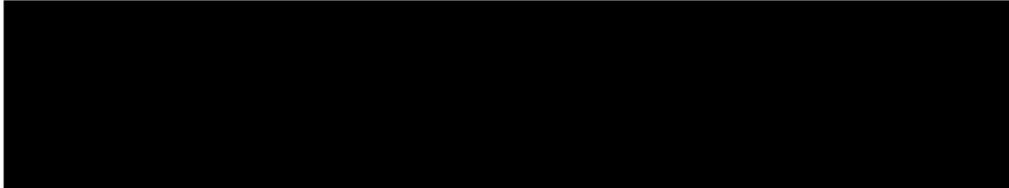
Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 106 70244]

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.

*Robert P. Wiemann*  
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 citizen and national 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 record reveals that the applicant filed his initial TPS application on June 21, 1999. The Director, Texas Service Center, approved that application on April 1, 2000.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on January 14, 2005, and indicated that he was re-registering for TPS.

The director denied the instant re-registration application on January 30, 2006, because the applicant failed to provide evidence regarding his past arrests.

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.

The director denied the application on June 28, 2005, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his convictions of three misdemeanors committed in the United States.

A review of the record of proceedings reflects that the applicant submitted the final court dispositions from the General Court of Durham County reflecting the following in North Carolina:

- 1) On July 13, 2000, the applicant was found guilty and convicted of "DWI - Level 1". The applicant was sentenced to two years and paid a fine of \$366;
- 2) On July 13, 2000, the applicant was found guilty and convicted of "DWLR" and paid a \$100; and,
- 3) On October 9, 2000, the applicant was found guilty and convicted of "DWI-Level 1". The applicant was sentenced to two years and paid a fine of \$590.

On appeal, counsel, on behalf of the applicant, provides certified true copies of court dispositions from the Clerk of Superior Court in Wake County, Georgia reflecting the following:

- 4) On February 28, 2006, , the applicant was found guilty and convicted of "Driving While Impaired (Section 20-138.1). The applicant was sentenced to nine days in jail and paid a fine of \$410.

Therefore, the applicant remains ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his convictions. Consequently, the director's decision to deny the application for TPS is affirmed.

Further, pursuant to 8 C.F.R. § 244.14(a) and (c), Withdrawal of Temporary Protected Status;

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; 63 FR 63593)

(c) Decision by AAU. If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 244.10(d).

The applicant's convictions have rendered him ineligible for TPS status. Therefore, in accordance with 8 C.F.R. § 244.14, the applicant's TPS status, which was granted on September 22, 2000, is hereby withdrawn.

Although not addressed by the director, the record of proceedings contains a Federal Bureau of Investigation report reflecting that the following additional arrests:

- 5) On August 22, 2003, the applicant was arrested and charged with "Resist/Obstruct Public Officer"; and,
- 6) On July 8, 2005, the applicant was arrested and charged with "Habitual Impaired Driving."

In any future proceedings before CIS, the applicant must provide the final court dispositions of these arrests and any other charges against him.

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 and the applicant's TPS is hereby withdrawn.