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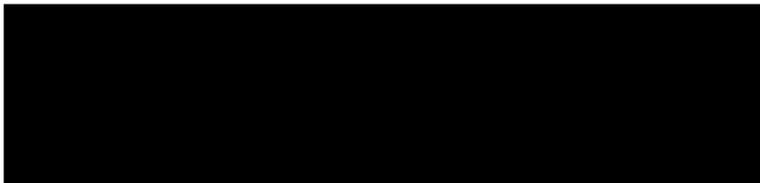
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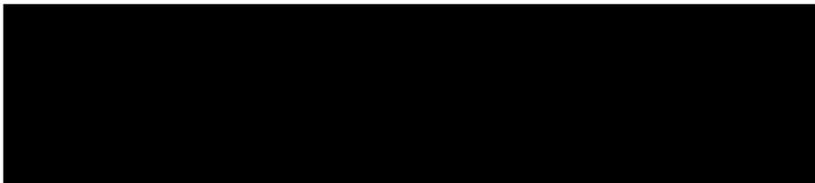
FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 20 2007**
[WAC 99 183 52284]

IN RE: Applicant:



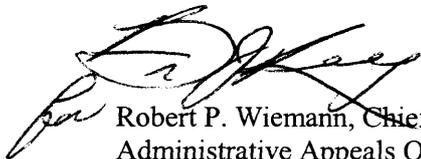
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 March 2, 2000. The director subsequently withdrew the applicant's TPS on January 31, 2007, when it was determined that 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).

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 reveals the following offenses:

- (1) On January 21, 2000, in the Municipal Court of Criminal Justice Center (LAC) Judicial, County of Los Angeles, California, (arrest date January 8, 2000) the applicant (name used:) was indicted for "disorderly conduct: prostitution," 647(b) PC, a misdemeanor. On February 3, 2000, the applicant was convicted of the offense. Imposition of sentence was suspended and the applicant was placed on probation for a period of 12 months, ordered to spend one day in the county jail, and pay \$177.75 in fines and costs.
- (2) On August 1, 2002, in the Superior Court of California, County of Los Angeles, Case No. (arrest date July 20, 2002), the applicant (name used:) was indicted for Count 1, "disorderly conduct: prostitution." On September 26, 2002, the court ordered the complaint amended by interlineation to add the misdemeanor offense of "keep/live in house of

ill fame," 315 PC, as Count 2. The applicant entered a plea of *nolo contendere* to Count 2, and the court found the applicant guilty of the offense. Imposition of sentence was suspended and the applicant was placed on probation for a period of 24 months, ordered to perform 45 days of "Cal Trans," and pay restitution fine in the amount of \$100. Count 1 was dismissed.

- (3) In response to the director's request for evidence dated April 7, 2005, the applicant submitted page 3 of a court docket relating to [REDACTED]. This page includes the progress report on January 3, 2003, for an unknown conviction relating to an unknown defendant, indicating that 35 of 52 domestic violence classes were completed, \$388 fees continued to May 5, 2003 (next scheduled event), and defendant was released on own recognizance. The applicant has failed to submit the complete court documents relating to this case.

On appeal, counsel resubmits copies of court documents (listed as Nos. 1 and 2 above) and asserts that both of the applicant's cases were dismissed; therefore, the applicant is eligible for TPS, and that withdrawal of her TPS is not appropriate, nor warranted in this matter.

The record indicates that on November 15, 2006 [approximately 4 years after the applicant's conviction of "keep/live in house of ill fame," under [REDACTED] 6, detailed in No. 2 above], and on December 5, 2006 [more than 6 years after the applicant's conviction of "disorderly conduct: prostitution," under Case No. [REDACTED], detailed in No. 1 above], the court set aside the applicant's plea of guilty or conviction, and a plea of not guilty was entered as to both [REDACTED] and [REDACTED] and both cases were dismissed pursuant to 1203.4 PC.

The Board of Immigration Appeals, 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. Therefore, the applicant remains convicted, for immigration purposes, of the two misdemeanor offenses listed as Nos. 1 and 2 above.

The applicant is ineligible for TPS due to her 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.

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.