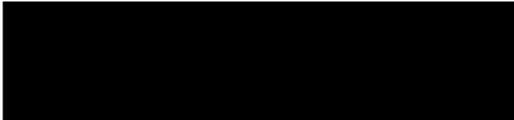




U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center

DATE:

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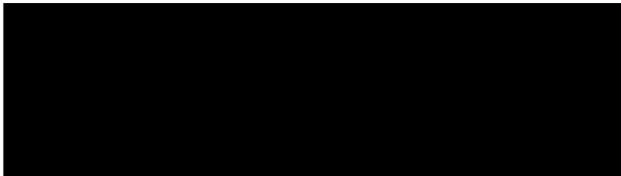
Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The applicant's previously granted Temporary Protected Status was withdrawn by the Director, Vermont Service Center (VSC). The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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.

The director withdrew the applicant's TPS on the ground that the applicant has been convicted of two misdemeanors committed in the State of California, making him ineligible for TPS under section 244(c)(2)(B)(i) of the Act.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. *See* C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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.
8 C.F.R. § 244.1.

The record includes final court dispositions of the Superior Court of California, County of Los Angeles, confirming that the applicant was convicted of two misdemeanor crimes, as follows:

1. October 6, 2003 – Driving under the Influence of Alcohol or Drugs, in violation of Vehicle Code, section 23152A.
2. October 5, 2005 – Inflicting Corporal Injury on Spouse, in violation of Penal Code, section 273.5(A).

On appeal, counsel asserts that the applicant was a victim of ineffective assistance of counsel (a public defender) in his first conviction for drunk driving, that the applicant did not commit the offense to which he pleaded nolo contendere, and that the applicant has now retained criminal counsel to assist him in vacating the conviction. Counsel requests that the AAO stay its decision on the applicant's appeal until a ruling is received from the Superior Court of California. The AAO will not grant this request.

The court records clearly show that the applicant was convicted of two misdemeanor crimes in California. Citizenship and Immigration Services (CIS) is required to rely on the court records as they stand, and may not look behind the convictions to reach an independent determination concerning guilt or innocence. See *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). Nor is the AAO constrained to wait until the applicant's effort to vacate one of his convictions is resolved. If the Superior Court should vacate the applicant's drunk driving conviction at some

time in the future, the applicant could file a motion to reopen this proceeding and seek to have his TPS reinstated.

Since the record establishes that the applicant has been convicted of two misdemeanors committed in the United States, he is ineligible for TPS under section 224(c)(2)(B)(i) of the Act. Therefore, the director's decision to withdraw approval of 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 that burden.

ORDER: The appeal is dismissed.