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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 99 140 50459]

Office: VERMONT SERVICE CENTER

Date: **DEC 07 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:



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 Director, Vermont Service Center, withdrew the approval of the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director withdrew the approval of the application because the applicant was convicted of two or more criminal misdemeanors in the United States on December 1, 2003.

On appeal, counsel for the applicant submits an order from the court dismissing one of the charges for which the applicant was convicted.

The director may withdraw the status of an alien granted TPS 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. 8 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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

An alien shall not be eligible for TPS 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 burden of proof is on the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that on December 1, 2003, in General District Court, in Harrisonburg, Virginia, the applicant pled guilty in:

1. docket number [REDACTED], to one count of shoplifting, a class 1 misdemeanor, for which she was sentenced to a \$250 fine;
2. docket number [REDACTED] to one count of shoplifting, a class 1 misdemeanor, for which she was sentenced to a \$350 fine; and,

3. docket number [REDACTED] to one count of assuming the name of another, a class 3 misdemeanor, for which she was sentenced to a \$150 fine.

The record also reflects that on May 3, 2007, [REDACTED] ordered, *nunc pro tunc* to December 1, 2005, that the charge in docket number [REDACTED] be dismissed. The AAO assumes that the Judge's order refers to the charge in docket number [REDACTED] from December 1, 2003, since there is no indication in the record of any arrests or convictions in 2005.

The relevance of the judge's *nunc pro tunc* order dismissing the one charge of shoplifting in docket number [REDACTED] does not affect the applicant's eligibility for TPS because she was convicted of two additional misdemeanors: one count of shoplifting in docket number [REDACTED], and, one count of assuming the name of another, in docket number [REDACTED].

Moreover, the applicant has failed to establish the reason why the judge dismissed the above-mentioned charge. The applicant bears this burden and since she has not met her burden, the conviction for the docket number C03-6330 shoplifting charge still exists for immigration purposes. *See, e.g., In Re Chavez-Martinez, 24, I&N Dec. 272 (BIA 2007).*

The applicant is ineligible for TPS due to her multiple misdemeanor convictions, detailed above. INA § 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw the approval of the application will be affirmed.

An alien applying for TPS 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.