



U.S. Citizenship  
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FILE:   
[SRC 99 131 52476]  
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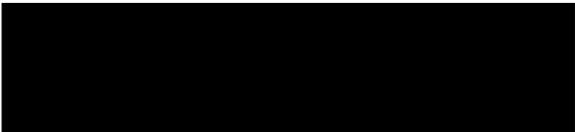
OFFICE: California Service Center

DATE: DEC 27 2007

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 California Service Center. Any further inquiry must be made to that office.

*John H. Vaughan*  
*for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (CSC) withdrew the applicant's previously granted Temporary Protected Status, and denied his re-registration application. The case is now on appeal before the Administrative Appeals Office (AAO). 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.

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, at the Texas Service Center (TSC) on March 31, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 131 52476. That application was approved on February 13, 2004. On December 19, 2004, the applicant filed a re-registration application with the CSC. The CSC director denied that application and withdrew the applicant's Temporary Protected Status on April 26, 2006, when he determined that the applicant was convicted of two felony offenses in the United States.

Sec. 244.14 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 [REDACTED])

*(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;(emphasis added)*

Further, 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 contains a Federal Bureau of Investigation (FBI) fingerprint results report, dated February 23, 2005, indicating that the applicant was arrested on December 19, 2004, and charged with the following offenses in Florida: "Larceny. Petit 1<sup>st</sup> Degree Property 100 to Under 300 Dollars," "Trespassing," "Burglary," and "Trespassing – Construction Site." Based on the FBI report, on October 17, 2005, the CSC director sent the applicant a Notice of Intent to Withdraw his TPS requesting the applicant to submit the final court dispositions for the above noted arrest.

In response, the applicant submitted the court dispositions from the Clerk of the Circuit Court of St. Lucie County, Florida stating that the applicant pleaded no contest on June 29, 2005 to "Trespass on Construction Site" (Florida Statute 810.09(2)(d)), a felony; and "Grand Theft – Construction Site" (Florida Statute 812.014), a felony. The CSC director determined that the applicant was convicted of two felonies and, therefore, denied the applicant's re-registration application and withdrew the approval of the applicant's TPS on April 26, 2006.

On appeal, counsel argues that the felony convictions have elements defined only as misdemeanors under the Immigration and Naturalization Act and do not qualify as crimes of moral turpitude.

The court dispositions clearly show that the applicant was pleaded no contest to two felony offenses: (1) "Trespass on Construction Site" (Florida Statute 810.09(2)(d)); and (2) "Grand Theft – Construction Site" (Florida Statute [REDACTED]). These convictions both carry a maximum prison sentence of five years (Florida Statute [REDACTED]) and therefore qualify as felonies under 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of two felony convictions as detailed above. Consequently, the director's decision to withdraw the applicant's Temporary Protected Status will be affirmed.

It is also noted that the applicant is subject to an outstanding Warrant of Removal/Deportation from the United States, which was issued by the District Director in San Francisco, California, on September 27, 1996.

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.