



U.S. Citizenship  
and Immigration  
Services

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FILE:

[EAC 04 054 51817]

OFFICE: VERMONT SERVICE CENTER

DATE: DEC 28 2007

IN RE:

Applicant:

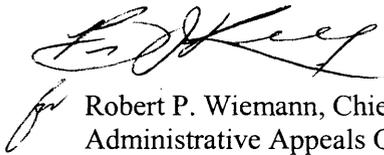
APPLICATION:

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 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 October 15, 2004. The director subsequently withdrew the applicant's TPS on September 12, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors.

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 May 16, 1997, in the Municipal Court of California, Santa Clara County Judicial District, San Jose Facility, Case No. [REDACTED] (arrest date April 20, 1997), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) PC, a misdemeanor; and Count 2, driving without a valid license, 12500(a) VC, a misdemeanor. On June 4, 1997, the applicant was convicted of Counts 1 and 2. He was placed on probation for a period of 3 years, ordered to spend 6 days in jail, and to pay \$601 in fines and costs as to Count 1. Sentence was suspended as to Count 2.
- (2) On December 20, 2001, in the Municipal Court for County of Santa Clara, State of California, San Jose Facility, Case No. [REDACTED] (arrest date November 5, 2001), the applicant was convicted of

disorderly conduct-under the influence of intoxicating alcohol/drug, 647(f) PC, a misdemeanor. He was sentenced to serve one day in jail, and ordered to pay \$100 in fines and costs.

- (3) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on December 23, 2005, in Santa Barbara, California, the applicant was arrested for Count 1, driving under the influence of alcohol/drug resulting in bodily injury; and Count 2, driving with .08 percent blood alcohol level-bodily injury. The final court disposition of this arrest is not contained in the record.
- (4) The FBI report indicates that on March 15, 2006, in Santa Barbara, California, the applicant was arrested for driving with .08 percent blood alcohol level. The report further indicates that the applicant was convicted of this offense; however, the actual final court disposition is not contained in the record.

The director withdrew the applicant's TPS after determining that the applicant was convicted of two misdemeanor offenses, and stated that although USCIS had not requested the final disposition of the applicant's two arrests (Nos. 3 and 4 above), "any Appeal or Motion to Reopen or Reconsider you may file will need to provide the certified judgment and conviction documents from the court for these two arrests as well as address the issues of withdrawal addressed previously in this letter."

On appeal, counsel contends that the director should be estopped from withdrawing the applicant's TPS under the doctrine of equitable estoppel, because USCIS had previously renewed the applicant's status after two convictions that the director asserts made him ineligible for TPS and failed to act in a timely manner to withdraw the applicant's TPS. Counsel states that the crimes the government alleges make the applicant ineligible for TPS are misdemeanors, the last of which was committed about five years ago.

United States Citizenship and Immigration Services (USCIS), like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to the Secretary of the Department of Homeland Security. Accordingly, USCIS has no authority to address counsel's equitable estoppel claim.

Additionally, as previously addressed above, pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the status of an alien granted TPS may be withdrawn 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. It is noted that the applicant had failed to disclose on Part 4, Section 2, of his TPS application (filed on December 16, 2003), that he had been arrested and/or convicted. Concealing any conviction(s) may render the applicant inadmissible to the United States under section 212(a)(6)(C) of the Act. Based on the FBI fingerprint results report, the applicant was requested to submit the final court disposition of his arrest listed on the FBI report. In response, the applicant submitted court documents relating to his arrests and convictions detailed in Nos. 1 and 2 above. A subsequent FBI fingerprint results report reveals additional arrests in 2005 and 2006 (Nos. 3 and 4 above). The applicant, however, failed to include the final court dispositions of these arrests during subsequent applications, correspondence, and on appeal.

Further, as provided in section 244(c)(2)(b) of the Act, an alien shall not be eligible for TPS if the Secretary finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. A time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Clearly, the applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the application is adjudicated.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions detailed in Nos. 1 and 2 above, and because he failed to provide the final court dispositions of his arrests detailed in Nos. 3 and 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw the applicant's temporary protected status 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.