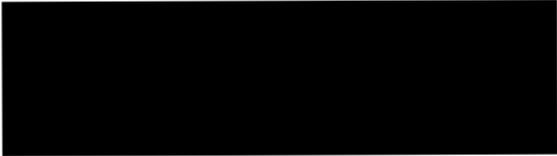


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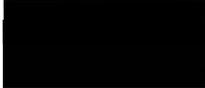
U.S. Citizenship
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Services

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invasion of personal privacy



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

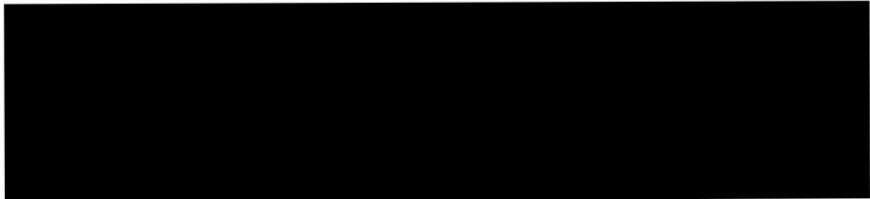
[incorporated herein]

[SRC 99 255 53681- as it relates to WAC 05 092 74172]

JAN 18 2001

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was initially approved. The approval was subsequently withdrawn by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number SRC 99 255 53681. The Director, CSC, withdrew the approval of the TPS application on August 3, 2006, because the applicant had failed to submit the requested final court dispositions stemming from his numerous arrests in the state of North Carolina.

On appeal, the applicant submits an explanation of his misunderstanding and his failure to respond to the Notice of Intent to Withdraw sent to the applicant on August 25, 2005. He states that because he subsequently received his new Employment Authorization Document, he thought that the documentation regarding the final court dispositions of his numerous arrests was no longer required, and therefore, did not respond. He also submits copies of court dispositions stemming from his numerous arrests in North Carolina.

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.

The record reveals the following offenses:

- The applicant was arrested on March 9, 2002, in Mecklenburg County, North Carolina, and charged with four counts:
 - misdemeanor simple assault and battery;
 - aggravated physical force, misdemeanor;
 - communicating threats, misdemeanor; and,
 - hit and run – failure to stop and property damage, traffic.

The applicant was convicted of the misdemeanor simple assault and battery charge, and sentenced to 15 days confinement and 12 months supervised probation.

- The applicant was arrested on June 16, 2002, and charged with one count of driving while impaired, level 2. The applicant was convicted of that offense on September 30, 2005, in Mecklenburg County, North Carolina, and was sentenced to 12 months confinement and 30 months supervised probation.

- The applicant was arrested on February 21, 2004, and charged with:
 - resisting public officer, a misdemeanor;
 - driving while impaired, traffic;
 - hit and run;
 - failure to stop; and,
 - property damage, traffic.

The applicant was not convicted of these charges.

- The applicant was arrested on July 4, 2005, and charged with:
 - assault on a female – non-aggravated physical force, misdemeanor.
 - interfering with emergency communications, misdemeanor.

On October 10, 2005, the applicant was convicted of assault on a female – non-aggravated physical force, a misdemeanor, and was sentenced to 18 months supervised probation. He was also convicted of a misdemeanor probation violation.

The applicant is ineligible for TPS due to his record of at least two or more misdemeanor convictions as detailed above. 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 application for this reason will be affirmed.

It is noted that the applicant was previously deported [removed] to Honduras from Houston, Texas, on October 29, 1996. He subsequently attempted to re-enter the United States, was apprehended at Brownsville, Texas, on December 8, 1996, and was again deported from Houston, Texas, on January 8, 1997.

The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial. 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.