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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:  
[WAC 05 089 82295]  
[WAC 99 122 53653]

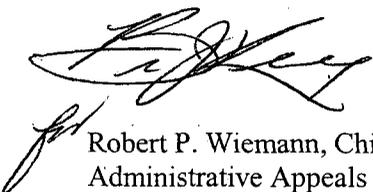
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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 on February 18, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 122 53653. That application was approved on March 16, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that he was re-registering for TPS. The director denied the re-registration application because the applicant had been convicted of a felony or two or more misdemeanors.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On December 18, 1987, in the Superior Court of California, County of Los Angeles, "Wilmer M. Young" was convicted of 2<sup>nd</sup> degree burglary, 211 PC, a felony. Probation was granted for a period of 3 years after spending the first 365 days in the county jail, and he was ordered to pay a restitution fine in the sum of \$100, and perform 1,000 hours of community service.
- (2) November 29, 1994, in the Municipal Court of Criminal Justice Center (LAC) Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 23, 1994), the applicant was indicted for Count 1, possession of a narcotic controlled substance, 11350(a) H&S, a felony; and Count 2, possession of pipe/paraphernalia, 11364 H&S, a misdemeanor. On December 27, 1994, the applicant was granted diversion in accordance with § 1000 PC as to both Counts 1 and 2. On November 29, 1995, diversion was terminated and the case was dismissed. Diversion has been found not a conviction for immigration purposes.
- (3) On September 30, 1997, in the Municipal Court of Criminal Justice Center (LAC) Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date September 28, 1997), the applicant was indicted for Count 1, inflicting corporal injury on a spouse, 273.5(a) PC, a misdemeanor. On October 14, 1997, the court ordered the complaint amended by interlineation to add the misdemeanor violation of 243(e) PC, battery against a partner/spouse, as Count 2. The applicant was subsequently convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 30 days in the county jail, and pay a restitution fine in the amount of \$100. Count 1 was dismissed.
- (4) On February 11, 1998, in the Superior Court of Central District Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 4, 1998), the applicant (name used: [REDACTED]) was indicted for Count 2, sell/transport a controlled substance (cocaine base), 11352(a) H&S, a felony. The indictment record further alleged as to Count 2, a prior conviction of 11352 H&S, a felony, on July 28, 1997, in Los Angeles County Superior Court, under Case No. [REDACTED]. On April 21, 1999, the applicant was convicted of Count 2. He was sentenced to imprisonment in the state prison for a total of 3 years. The court record does not list the offense as to Count 1. Further, court records relating to the applicant's conviction on July 28, 1997, is not contained in the record.
- (5) The Docket Report for the Superior Court of the State of California, County of Orange, Case No. [REDACTED], indicates that the applicant was arrested on May 21, 2003, for the misdemeanor charge of 23114(e)(1) VC, transporting uncovered aggregate material upon a highway. The final disposition of this arrest is not reflected on the court record.
- (6) The Federal Bureau of Investigation fingerprint results report indicates that on February 28, 2000, in Anaheim, California, the applicant was arrested for Count 1, possess/purchase for sale narcotic controlled substance; and Count 2, transport/sell narcotic controlled substance. The records of the State of California, Department of Justice, Bureau of Criminal Identification, and the City of

Anaheim Police Department indicate that the applicant was released on February 29, 2000, based on insufficient evidence, and in accordance with 849(b)(1) PC.<sup>1</sup>

The director denied the application after determining that the applicant was convicted of a felony or two or more misdemeanors (Nos. 1, 3, and 4 above).

On appeal, the applicant states that he agrees to only one conviction, battery against a partner/spouse (No. 3 above). He asserts that the conviction on April 21, 1999 (No. 4 above) was dismissed due to insufficient evidence, and that the conviction of burglary on December 18, 1987 (No. 1 above), is inaccurate because he came to the United States in November 1993.

A further review of the record of proceeding indicates that on May 1, 1994, the applicant filed Form I-589, Application for Asylum and for Withholding of Deportation. He indicated on that application that he entered the United States on November 29, 1990. In removal proceedings held on September 1, 1995, in Los Angeles, California, the Immigration Judge granted the applicant voluntary departure on or before March 1, 1996, with an alternate order of deportation to Honduras, and that "all other forms of relief were withdrawn or not before the court." Form I-205, Warrant of Deportation, was issued on April 2, 1996. As claimed by the applicant, the record indicates that he was not in the United States on December 18, 1987, the date he was allegedly convicted of No. 1 above. Most importantly, it is noted that in December 1987, the applicant was only 12 years of age. Therefore, as claimed by the applicant, the conviction of 2<sup>nd</sup> degree burglary, detailed in No. 1 above, does not relate to the applicant. Therefore, this finding of the director will be withdrawn. However, contrary to the applicant's claim that the alleged conviction on April 21, 1999 (sell/transport a controlled substance, detailed in No. 4 above) was dismissed, the record indicates that the applicant was, in fact, convicted of that offense. Rather, the charges on November 29, 1994, for possession of a narcotic controlled substance, and possession of pipe/paraphernalia (detailed in No. 2 above) were dismissed on November 29, 1995, based on completion of diversion.

The applicant is ineligible for TPS due to his convictions of at least one felony or two or more misdemeanors, detailed in Nos. 3 and 4 above, and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related conviction. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the applicant's temporary protected status will be withdrawn.

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.

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<sup>1</sup> Section 849 PC states, in part: (b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever: (1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.