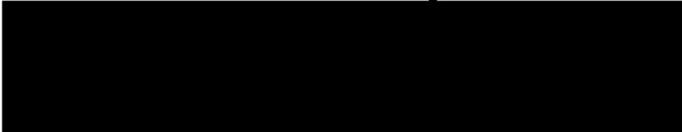




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



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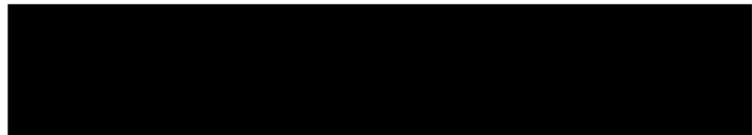
OFFICE: California Service Center

DATE: MAR 05 2007

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IN RE:

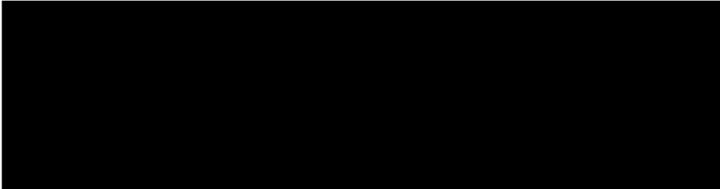
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a 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 March 10, 2000.

In a Notice of Decision dated April 25, 2006, the director denied the applicant's current application for re-registration of TPS, in accordance with section 244(c)(2)(B) of the Act, because he found that the applicant had been convicted of two misdemeanors in the State of California, making him ineligible for TPS. The director also withdrew the applicant's previously granted TPS, in accordance with the regulation at 8 C.F.R. § 244.14(a)(1), which provides that the status of an alien granted Temporary Protected Status under section 244 of the Act may be withdrawn 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.

On appeal counsel claims that the applicant's second conviction does not constitute a misdemeanor, as defined in the regulation at 8 C.F.R. § 244.1, because he was not imprisoned for more than five days.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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 includes a final court disposition of the Superior Court of California, County of Los Angeles, confirming that the applicant pleaded guilty on December 16, 1999 to theft of property, a misdemeanor under California law, and was sentenced to 3 days in jail and 24 months of summary probation.

The record also includes a final court disposition of the Superior Court of California, County of Orange, confirming that the applicant pleaded guilty on February 5, 2004 to two vehicular counts – (1) driving under the influence of alcohol/drugs and (2) driving with blood alcohol weight of 0.08% or more – both misdemeanors under California law. The court stayed sentence on Count 2 and, with respect to Count 1, sentenced the applicant to three years of probation and five days of voluntary service in lieu of five days in jail.

Counsel argues on appeal, and in the earlier response to the director’s notice of intent to withdraw, that because the applicant did not serve a jail term of more than five days on any of the above convictions, they do not meet the regulatory definition of misdemeanors. According to counsel, under 8 C.F.R. § 244.1 “a misdemeanor is a conviction for which a person is imprisoned for more than 5 days . . . and less than one year.” Counsel’s interpretation of the regulation is incorrect. The regulation clearly states that a misdemeanor is a crime “*punishable* by imprisonment for . . . one year or less, *regardless of the term* . . .

actually served." [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under California law, not the specific prison term meted out by the judge in a particular case. As indicated in the guilty plea form filled out by the applicant for his vehicular violations, the maximum jail term for each count is six months. Thus, they qualify as misdemeanors under 8 C.F.R. § 244.1. As for the earlier theft of property conviction, under section 484(a) of the California Penal Code, the court record does not give any particulars about the applicant's crime. The AAO notes, however, that under code sections 489 and 490 grand theft is punishable by imprisonment of 16 months to three years, if it involves the theft of a firearm, and up to one year in other circumstances, and petty theft is punishable by up to six months in jail. Whether petty theft or grand theft, therefore, the applicant's conviction is punishable by more than five days imprisonment under California law, and qualifies as a misdemeanor (at least) under the regulation.

Since the record establishes that the applicant has been convicted of two or more misdemeanors committed in the United States, he is ineligible for TPS under section 224(c)(2)(B)(i) of the Act. Therefore, the director's decision to deny the applicant's re-registration application and withdraw the applicant's previously granted TPS 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.