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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

MAR 05 2007

[WAC 05 092 75819]

[EAC 99 204 52165]

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 indicates that the applicant filed a TPS application during the initial registration period on May 27, 1999, under Citizenship and Immigration Services (CIS) receipt number EAC 99 204 52165. That application was approved on January 27, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 31, 2004, and indicated that he was re-registering for TPS. The director denied the re-registration application on January 9, 2006, because the applicant had failed to submit the final court dispositions of all of his arrests.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application.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 Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on July 20, 2005, to submit the final court dispositions of any and all arrests, including his arrests listed in the FBI report. In response, the applicant submits the court dispositions of the following offenses:

- (1) On March 31, 2005, in the Henry County Circuit Court, Virginia, Case No. [REDACTED] (arrest date December 31, 2004), the applicant was convicted of driving under the influence 2<sup>nd</sup> offense, Virginia Code § 18.2-266, a misdemeanor. He was sentenced to 12 months in jail, his driver's license was suspended for 3 years, and he was ordered to pay \$1086 in fines and costs.
- (2) On March 31, 2005, in the Henry County Circuit Court, Virginia, Case No. [REDACTED] (arrest date December 31, 2004), the applicant was convicted of driving with suspended license, VA Code § 18.2-272, a misdemeanor. He was sentenced to 12 months in jail, and ordered to pay \$200 in fines.
- (3) The FBI report indicates that on January 1, 2005, in Martinsville, Virginia, the applicant was arrested for Count 1, driving under the influence of alcohol; Count 2, reckless-general; and Count 3, driving after forfeiture of license. The final court disposition of this arrest is not contained in the record, nor is it clear whether this arrest relates to No. (1) and/or No. (2) above.
- (4) The FBI report indicates that on January 21, 2004, in Martinsville, Virginia, the applicant was arrested for Count 1, brandishing firearm; and Count 2, assault and battery. The final court disposition of this arrest is not contained in the record.

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). 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.