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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 99 125 53633]
[WAC 05 047 76831]

MAY 07 2007

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:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 July 1, 2000. The director subsequently withdrew the applicant's TPS status on August 15, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) requesting that he submit the final court dispositions of all of his arrests. Within the same decision, the director denied the applicant's re-registration application, filed on November 16, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 05 047 76831, because the applicant had abandoned his re-registration application based on his failure to respond to the ITW.

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).

On appeal, counsel submits a statement and additional evidence.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested, in a Notice of Intent to Withdraw dated August 26, 2005, to submit the final court dispositions of all of his arrests, including the arrests listed on the FBI report. The applicant's former counsel responded on September 9, 2005, and requested additional time in which to submit the requested court documents.

However, because no additional evidence was forthcoming, the director withdrew the applicant's TPS on August 15, 2006.

On appeal, counsel asserts that the applicant "has only one misdemeanor for a DUI." She submits additional documents.

The record reveals the following offenses:

- (1) On January 13, 2000, in the Municipal Court of Whittier Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 28, 1999), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On January 27, 2000, the applicant was convicted of Count 2. He was placed on probation for a period of 3 years, ordered to pay \$193 in fines and costs, to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days.
- (2) On October 10, 1997, in the Municipal Court of Long Beach Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date October 8, 1997), the applicant (name used: [REDACTED]) was indicted for "disorderly conduct: prostitution." The applicant was not present at his arraignment on October 23, 1997, and a bench warrant in the amount of \$10,000 was issued. On December 9, 2002, the bench warrant was recalled, and the court ordered the case dismissed.
- (3) The FBI report indicates that on March 15, 1991, the applicant was arrested by the Whittier Police Department and charged with "false identification to a peace officer," 148.9 PC, a misdemeanor. The FBI report shows that the applicant was subsequently convicted of the offense in the Municipal Court of Whittier, California, and he was ordered to serve 3 days in jail. The actual final court disposition of this arrest, however, was not furnished by the applicant; rather, the applicant furnished a letter dated September 1, 2006, from the Superior Court of California, County of Los Angeles, indicating that a search of their criminal records/indexing between the years March 15, 1991 to 1996 revealed no case number or record regarding [REDACTED] and that "this does not mean that records do not exist under another spelling, name, or by some other classification, but that the information furnished to our office and to the best of our knowledge, no such records exist in our files at the Los Angeles Superior Court, Whittier, Courthouse."

It is noted that the only information used by the court to search their records is the applicant's name and date of birth. There is no evidence that the arrest information, such as, the date and place of arrest and offense or "by some other classification," were used for the search. Furthermore, there is no evidence that the applicant's case was heard at this court. It is noted in the FBI report that the case was heard in the Municipal Court rather than in the Superior Court.

The applicant has failed to provide the final court disposition of his arrest detailed in No. (3) above. The applicant is, therefore, ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to withdraw the applicant's 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.