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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: [REDACTED] Office: California Service Center Date: MAY 29 2007
[WAC 99 125 54373]

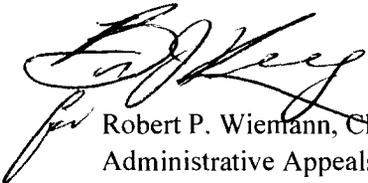
IN RE: Applicant: [REDACTED]

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. Wientann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 an initial TPS application on March 9, 1999, under CIS receipt number WAC 99 125 54373. The director approved that application on July 7, 1999.

The director, however, withdrew the applicant's TPS on August 23, 2006, as the applicant had been convicted of two misdemeanors. The director noted that on October 10, 2000, the applicant was convicted, in Superior Court of California, County of Los Angeles, of the following charge(s): Count 1: 459 PC MISD – Burglary; and, Count 2: 484 PC MISD – Theft of Property.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that “the alien was not in fact eligible for such status” or if “the alien fails, without good cause, to re-register ... in a form and manner specified by” the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, “the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status,” or if, “the alien fails without good cause to re-register”.

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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.

As noted by the director, the final court dispositions reveal that on October 10, 2000, the Superior Court of California, County of Los Angeles County, California:

- 1) Convicted the applicant, on a nolo contendere plea, of a violation of Section 459 PC (Burglary), a misdemeanor. The applicant was sentenced to 3 years probation (with 10 days in jail), plus \$100.00 fines; and,
- 2) Convicted the applicant, on a nolo contendere plea, of a violation of Section 484 (A) (Theft of Property), a misdemeanor. The applicant was sentenced to 3 years probation (with 1 day in jail), plus \$255.00 fines.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, 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 applicant's TPS will be affirmed for this reason.

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.