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**U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 05 2007**
[SRC 01 245 52263]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be a native and citizen of Honduras who was granted TPS on February 2, 2002. The director subsequently withdrew the applicant's status and denied the re-registration application on July 24, 2006, when it was determined that the applicant had failed to submit court dispositions for all charges that had been made against him, and specifically, for his arrests on September 8, 2002, for a non-moving traffic violation, on April 2, 2003, for aggravated assault-weapon and battery and on May 11, 2003, for aggravated assault-weapon. The director also requested that he submit a court disposition for his arrest on February 13, 2006, for burglary, aggravated assault-weapon, firing weapon, battery and damage property-criminal mischievous.

The VSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The CSC Director should have followed the regulations at 8 C.F.R § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

On appeal, the applicant acknowledges that he failed to respond to the director's Notice of Intent to Withdraw dated May 10, 2006, but indicated that he did so because the notice was not received by him at the address where he lives. The applicant submits for consideration court dispositions for arrests on October 28, 2002, April 2, 2003 and May 11, 2003.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On September 8, 2002, the applicant was arrested by the Miami Beach Police Department in Florida, for having no valid driver's license, a misdemeanor. (Case Number [REDACTED]) Despite the director's request, the applicant failed to provide the court disposition for this offense.
- (2) On October 28, 2002, the applicant was arrested by the Miami-Dade Police Department in Florida, and charged with Petit Theft and driving while his license was suspended. (Case Number [REDACTED]). The court disposition document submitted by the applicant shows the notations "12/19/02 PNC W/H SES" which does not clarify the final dispositions for these two charges.
- (3) On April 2, 2003, the applicant was arrested by the Miami Police Department in Florida, and charged with two counts of aggravated assault with a weapon and simple battery. (Court Case Number [REDACTED]) No action was taken and the case was closed by the Circuit and County Courts of Dade County, Florida, on April 23, 2003.
- (4) On May 11, 2003, the applicant was arrested by the Metro-Dade Police Department in Florida, and charged with aggravated assault with a weapon. (Court Case Number [REDACTED]) No action was taken and the case was closed by the Circuit and County Courts of Dade County, Florida on June 11, 2003.
- (5) On February 13, 2006, the applicant was arrested by the Metro-Dade Police Department in Florida, and charged with burglary of an occupied conveyance, aggravated assault with a weapon, firing a weapon, battery and damaging property and criminal mischief. (Court Case Number [REDACTED]) Despite the director's request, the applicant failed to provide the court disposition(s) for these offenses.
- (6) On March 30, 2006, the applicant was arrested for the possession of marijuana, 20 grams or less. (Court Case Number [REDACTED]). The final disposition of this offense is unknown.

The applicant provided no court disposition for the charge of having no valid driver's license, listed as Item (1) above. The notes listed on the court document submitted by the applicant for Item (2) do not establish what the final court dispositions were for these charges against him. Furthermore, the applicant has failed to provide final court dispositions for the charges listed in Items (5) and (6) above. Consequently, the decision of the director to withdraw the applicant's TPS is affirmed.

Although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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.