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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: VERMONT SERVICE CENTER DATE: **NOV 06 2007**  
[EAC 99 211 51161]

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 director initially denied the application on August 15, 2003, because the applicant failed to establish his eligibility for TPS. The applicant filed an appeal on September 8, 2003. The Director, AAO, remanded the decision to the service center on August 2, 2005, because the director did not specify his reasons for denial. The director denied the application on April 25, 2006, because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, the applicant states that he has submitted all documents requested and would like an opportunity to continue to work legally in the United States.

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.

The record reveals the following offenses:

- The applicant was arrested on December 21, 1992, in the county of Los Angeles, California, and charged with one count of disorderly conduct: prostitution. On January 11, 1993, the applicant failed to appear in court and a bench warrant was issued for his arrest. On April 5, 2006, the applicant was brought before the court and pled guilty to count 2, failure to appear in court, an infraction, and the original charge of disorderly conduct was dismissed due to plea negotiations.
- The applicant was arrested on October 9, 2004, in Fairfax County, Virginia, and charged with one count of possession of a controlled drug, a felony, and driving while intoxicated, alcohol. On June 28, 2005, the applicant was found guilty of possession of drug paraphernalia—a lesser-included offense of felony drug possession—and sentenced to six months in jail, suspended with a period of probation. On August 31, 2005, the applicant was found guilty of driving while intoxicated, alcohol, a misdemeanor.

- The applicant was arrested on February 21, 1996, in the Commonwealth of Virginia, and charged with receipt of stolen property, a felony. The record shows that the charge was nolle prossed on March 12, 1996.
- The applicant was arrested on December 22, 1997, in Fairfax County, Virginia, and charged with one count of procurement with intent to defraud a taxi cab driver. On January 27, 1998, the applicant was found guilty of disorderly conduct—a lesser-included offense of procurement with intent to defraud a tax cab driver.

The applicant is ineligible for TPS due to his record of at least two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision 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.