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



U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [Redacted]
[WAC 05 155 71138]

Office: CALIFORNIA SERVICE CENTER Date:

NOV 15 2007

IN RE: Applicant: [Redacted]

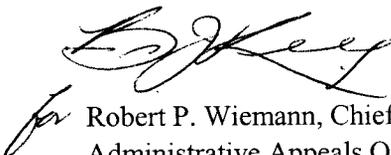
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center (CSC), and the case is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Honduras who was granted TPS on August 6, 1999. The CSC director subsequently withdrew the applicant's TPS on February 27, 2006, when it was determined that the applicant had failed to submit all the evidence related to an arrest as requested in a Notice of Intent to Withdraw TPS. The director also found that the failure to timely and adequately respond to the notice constitutes a failure to re-register for TPS.

An alien who has been granted TPS must register annually with the district office or service center having jurisdiction over the alien's place of residence 8 C.F.R. § 244.17(a).

TPS shall be withdrawn if the alien fails, without good cause, to register annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General. Section 244(c)(3)(c) INA.

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.
8 C.F.R. § 244.1.

On August 29, 2005, the CSC director notified the applicant that his TPS would be withdrawn because the applicant was arrested for assault by the La Grange Police Department on November 28, 2002, and therefore, may be ineligible for TPS. The notice also requested the applicant to submit the final court disposition of this arrest.

The applicant's response was received on September 21, 2005 including a certified copy of the court docket indicating that the applicant was found guilty of 4th degree Assault, Domestic Violence Minor Injury, on November 29, 2002, and sentenced to 30 days in jail. A second charge of violation of Kentucky E.P.O/D.V.O. was dismissed. The director concluded that the applicant's response was incomplete and failed to overcome the grounds stated in the Notice of Intent to Withdraw. Consequently, the applicant's TPS was withdrawn on February 27, 2006.

On appeal, the applicant's representative argues that the applicant submitted the requested court disposition and, therefore, has satisfied the requirements for re-registration. He also resubmits the documents previously furnished in response to the notice.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act if the alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status. 8 C.F.R. § 244.17(c).

In this case, the applicant provided the evidence requested by the director in the Notice of Intent to Withdraw. The record reflects that the applicant has been found guilty of one misdemeanor which does not preclude him from receiving TPS. There are no other known grounds of ineligibility; therefore, the director's decision will be withdrawn and the appeal will be sustained.

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 met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.