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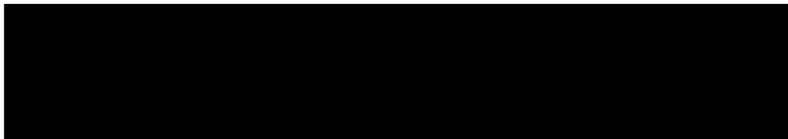
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 16 2007**  
[WAC 99 199 52564]  
[WAC 05 077 70512]

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.

  
for 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 case will be remanded to the director for further action.

The applicant claims to be 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 April 1, 2000.

The director subsequently withdrew the applicant's TPS status on May 11, 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 disposition of his arrests listed on the Federal Bureau of Investigation (FBI) fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on December 16, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 05 077 70512, 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).

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 FBI fingerprint results report, the applicant was requested on September 20, 2005, to submit the final court dispositions of all of his arrests, including the arrest listed on the FBI report. The applicant failed to respond; therefore, the director withdrew the applicant's TPS and denied the re-registration application on May 11, 2006.

On appeal, counsel asserts that the applicant did not receive the notice of intent to withdraw his TPS. He submits court documents relating to a February 27, 2000 arrest in Los Angeles, California.

A review of the record indicates that on September 20, 2005, the director issued a notice of intent to deny (ITW) requesting that the applicant submit the final court dispositions of all of his arrests, including his arrest in Los Angeles, California, on February 27, 2000, that was listed on the FBI report. Although the ITW was addressed to the applicant at his current address at that time [REDACTED] the "blue processing coversheet" was addressed and sent to the applicant's previous address ([REDACTED]) [REDACTED]

The record reveals the following offenses:

- (1) On February 27, 2000, in the Superior Court of California, County of Los Angeles, the applicant was arrested for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 3, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 4, no proof of car insurance, 16028(a) VC, an infraction. On February 28, 2000, the applicant was convicted of Counts 2 and 4. He was placed on probation for a period of 36 months under the condition that he serve 48 hours in the county jail, ordered to pay \$1332 in fines and costs, and to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, as to Count 2. He was ordered to pay \$324 in fines and costs as to Count 4. Counts 1 and 3 were dismissed.
- (2) The FBI report indicates that on September 29, 2003, in Los Angeles, California, the applicant committed the offense of "obstruct police," and a warrant was subsequently issued. The outcome of this offense is not contained in the record.

The ITW requested that the applicant submit the court disposition of his arrest listed as No. 1 above, including court dispositions of "all other arrests;" however, as noted above, the ITW was sent to the applicant's old address. Additionally, the director's notice of withdrawal and notice of decision to deny TPS re-registration only advised the applicant that he was instructed on the ITW to submit, within 30 days, the final court disposition of an arrest for "DUI, Alcohol/Drugs" (No. 1 above). The notice did not address the fact that the ITW requested that the applicant also submit court dispositions of all other arrests.

Accordingly, the case will be remanded so that the director may reissue an intent to withdraw the initial application and send to the applicant's most recent address. 8 C.F.R. § 244.10(c). The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted on the FBI report that the applicant had indicated that he was born in Belize, and that he is a citizen of Belize. The applicant is required to meet the eligibility requirements that he is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Belize is not a foreign state designated under section 244 of the Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.