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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 26 2007
[LIN 99 106 52624]
[WAC 05 095 71630]

IN RE: Applicant: [REDACTED]

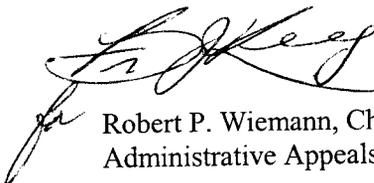
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the California 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

The applicant is 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 January 13, 2000. The director subsequently withdrew the applicant's TPS status on June 1, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) dated March 20, 2006, requesting that she submit the final court dispositions of all of her arrests, including her arrest listed on the Federal Bureau of Investigation fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on January 3, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 095 71630, because the applicant had abandoned her application based on her failure to provide the final court dispositions of all her arrests.

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.

On appeal, counsel asserts that the applicant's one misdemeanor offense does not make her ineligible for continued TPS status. Counsel submits the records of the Circuit Court of Cook County, State of Illinois, under Case No. [REDACTED], indicating that on March 1, 2006, the applicant was indicted for the felony offense of "retail theft." On March 12, 2001, the court amended the felony charge to a misdemeanor, and the applicant entered a plea of guilty to the amended charge, and the court found the applicant guilty of the charge. She was placed on probation for a period of one year, and sentenced to community service for 20 days.

The applicant's one misdemeanor conviction does not render her ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), as an alien who has been

convicted of a felony or two or more misdemeanors committed in the United States. There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's Temporary Protected Status will, itself, be withdrawn, and the application will be approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the applicant has overcome the withdrawal of her TPS, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof is upon the applicant to establish 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 that burden.

ORDER: The appeal is sustained and the applications are approved.