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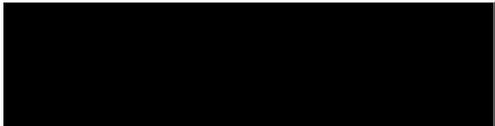
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 26 2007

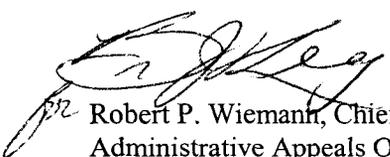
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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.

  
Robert P. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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

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 November 11, 1999. The director subsequently withdrew the applicant's TPS status on February 26, 2007, when it was determined that the applicant had failed to submit final court dispositions of all of his arrests as requested in the notice of intent to withdraw (ITW) dated July 10, 2006. Within the same decision, the director denied the applicant's re-registration application, filed on May 29, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 251 77993, because the underlying TPS was withdrawn based on the applicant's failure to timely and/or adequately respond to the ITW.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).

On appeal, the applicant submits a statement and the requested final court disposition of his arrests.

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.

The record reveals the following offenses:

- (1) On December 20, 2004, in the District Court for the Twenty-Fifth Judicial District, State of Michigan, the applicant was convicted of "attempted retail fraud."<sup>1</sup> He was ordered to pay \$700 in fines and costs.

<sup>1</sup> According to Michigan Penal Code § 750.356d, retail fraud (and intent to defraud) is a misdemeanor, punishable by imprisonment for not more than one year.

- (2) On March 16, 2006, in the District Court for the Twenty-Fifth Judicial District, State of Michigan, the applicant was convicted of "driving while license suspended."<sup>2</sup> He was ordered to pay \$300 in fines and costs.

On appeal, the applicant asserts that the charge for retail fraud was a misunderstanding as he was not attempting to defraud. He explains that the salesperson did not remove the electronic device from a piece of new tool that that he had been given in exchange for one that he had returned as defective. He requests that his TPS be reinstated because he had paid the fine and the case was closed.

The court record, however, clearly shows the applicant was convicted of the offense of attempted retail fraud. CIS is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991). Further, the fact that he had paid the fine and the case was closed is not evidence that the conviction had been dismissed.

Accordingly, the applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS and to deny the re-registration application 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.

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<sup>2</sup> According to Michigan Vehicle Code § 257.904, operating a vehicle while license is suspended or revoked is a misdemeanor, punishable by imprisonment for not more than 93 days.