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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



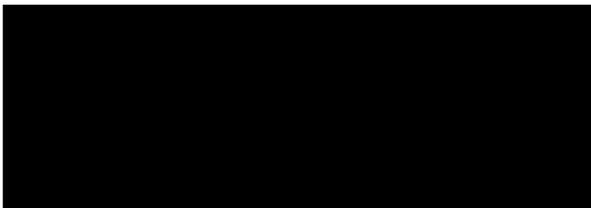
OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 26 2007

[WAC 05 089 78726]  
[SRC 99 223 52063]

IN RE:

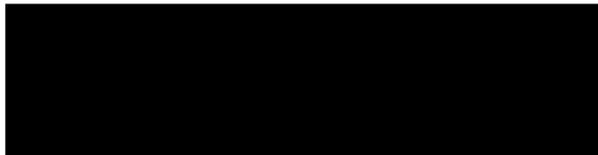
Applicant:



APPLICATION:

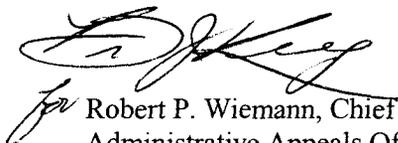
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 July 1, 2000. The director subsequently withdrew the applicant's TPS on March 16, 2006, when it was determined that the applicant had been convicted of two or more misdemeanors or a felony.

The applicant filed a subsequent TPS application [WAC 05 089 78726] and indicated that she was re-registering for TPS. The CSC director denied the re-registration application also on March 16, 2006, because the applicant's TPS application had been withdrawn on November 16, 2005,<sup>1</sup> and the applicant was not eligible to apply for re-registration for TPS. It appears that the director was referring to the applicant's initial TPS application [SRC 99 223 52063] that was withdrawn on March 16, 2006.

A remand of this case to the director based on premature denial of the re-registration application would not overcome the withdrawal of the applicant's initial TPS application, because the record as presently constituted establishes that the applicant was, indeed, convicted of two misdemeanor offenses as detailed below.

Form I-290B, Notice of Appeal to the Administrative Appeals Office, was filed by counsel on May 8, 2006. Counsel requests that the director accept the late appeal because the director's decision was sent to the wrong address. He asserts that on January 18, 2006, the applicant notified USCIS of her new address [REDACTED] however, the director's Notice of Decision was sent to the wrong address ([REDACTED]). Accordingly, the applicant's appeal will be accepted as timely.

An alien shall not be eligible for temporary protected status 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

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<sup>1</sup> There is no evidence in the record that the initial TPS application was withdrawn on November 16, 2005. The record of proceeding, however, contains the CSC director's decision to withdraw the applicant's TPS dated March 16, 2006.

(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:

- (1) On March 12, 2002, in the County Court of the Twentieth Judicial Circuit, Lee County, Florida, Case No. [REDACTED] (arrest date February 20, 2002), the applicant was convicted of Petit Theft (Retail) in violation of Florida Statute (FS) 812.014, a misdemeanor. She was placed on probation for a period of 6 months, and ordered to pay \$400 in fines and costs. On August 23, 2002, the court found the applicant in violation of her probation, and she was ordered to pay a fine in the amount of \$250, and her probation was revoked and terminated.
- (2) On November 29, 2004, in the County Court, Lee County, Florida, Case No. [REDACTED] (arrest date November 10, 2004), the applicant [REDACTED] was convicted of Allowing Unauthorized Person to Drive, in violation of FS 322.36, a misdemeanor. She was ordered to pay \$380 in fines and costs.

The applicant is ineligible for TPS due to her 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 decisions to withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

It is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Additionally, it is noted on the Federal Bureau of Investigation fingerprint results report that the applicant had indicated she was born in Honduras and that she is a citizen of the United States. Falsely claiming United States citizenship may render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act.

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.