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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:

[WAC 02 229 55175]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

OCT 05 2007

IN RE:

Applicant:

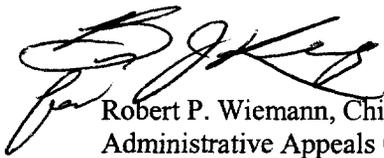


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the appeal will be sustained.

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 3, 2003. The director subsequently withdrew the applicant's TPS on January 20, 2006, when it was determined that the applicant had been convicted of a felony or two or more misdemeanors.

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.

The record indicates that on May 18, 1998, In the Superior Court of Central District Judicial District, County of Los Angeles, California, Case No. [REDACTED] the applicant, under the name of [REDACTED] was indicted for Count 1, kidnapping to commit a crime, 209(b)(1) PC, a felony; and [REDACTED] the court ordered the information amended by interlineation to add the felony violation of 207(a) PC, kidnapping, as Count 3, and the court dismissed Count 1. On October 23, 1998, the applicant was acquitted by a jury as to Count 2. Additionally, the jury found the applicant not guilty of kidnapping as to Count 3, but found the applicant guilty of the crime of "false imprisonment," a violation of section 236 PC, a felony, a lesser included offense as charged in Count 3. The jury further found "the allegation that in the commission and attempted commission of the offense, the defendant, [REDACTED] used violence or menace pursuant to [REDACTED] to be not true." The court, therefore, "determines Count 3 to be a misdemeanor and orders defendant released on time served sentence" [260 days in the Los Angeles County Jail].

Section 237 of the Penal Code of California states:

False imprisonment is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not more than one year, or by both. If such false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison.

The record, in this case, shows that the felony charges for (1) kidnapping to commit a crime, (2) robbery, and (3) kidnapping, were all dismissed, and the applicant was found guilty, by a jury, of false imprisonment. As provided in § 237 PC, false imprisonment is a misdemeanor; however, if such false imprisonment was accompanied by violence, menace, fraud, or deceit, it is a felony offense. The jury found that the allegation that the applicant used violence or menace "to be not true," and he was found guilty of the lesser-included offense of false imprisonment. The court ultimately declared the offense a misdemeanor, and the applicant was sentenced 260 days in jail.

The applicant was convicted of only one misdemeanor offense. Therefore, the applicant is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act. Accordingly, the director's decision to withdraw the applicant's temporary protected status will be withdrawn, and the application will be approved.

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 appeal is sustained and the application is approved.