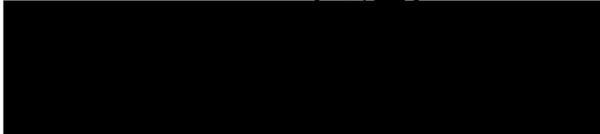




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**



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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: OCT 05 2007

[WAC 99 104 51644]

[EAC 06 223 73220]

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 February 4, 2000.

The director subsequently withdrew the applicant's TPS on February 1, 2007, when it was determined that the applicant had been convicted of two or more misdemeanor offenses. Within the same decision, the director denied the applicant's re-registration application, filed on May 11 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 223 73220, because the underlying TPS was withdrawn based on the applicant's convictions.

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 resubmits court documents previously furnished.

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.

In a notice of intent to withdraw dated June 22, 2006, the applicant was requested to submit final court dispositions of his three arrests listed on the Federal Bureau of Investigation (FBI) fingerprint results report. In response, the applicant submitted court dispositions of two arrests. The director determined that the applicant was convicted of two misdemeanor offenses, and a third arrest on February 28, 2006, was not addressed in the applicant's response. The director, therefore, withdrew the applicant's TPS on February 1, 2007.

The record reveals the following offenses:

- (1) On May 27, 2004, in the Superior Court of California, County of Los Angeles, Case No. 4MY05104 (arrest date May 8, 2004), the applicant (name used: [REDACTED]) was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On June 3, 2004, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to pay \$1,359 in fines and costs, enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Count 1 was dismissed.
- (2) On January 19, 2006, in the Superior Court of California, County of Orange, Case No. 06NM00730MA (arrest date December 16, 2005) the applicant (name used: [REDACTED]) was indicted 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; and Count 3, driving with revoked/suspended license, 14601.5(a), a misdemeanor. On January 26, 2006, the applicant entered a plea of guilty as to Counts 1 and 2. The applicant was placed on probation for a period of 5 years, ordered to pay \$697 in fines and costs, to attend and complete 18-month Multiple Offender Alcohol Program, and to attend and complete Mother's Against Drunk Driving (MADD) Victim's Impact Panel, as to Count 1. The court stayed sentence pursuant to Penal Code 654 as to Count 2.<sup>1</sup> Count 3 was dismissed.
- (3) The director determined that the applicant failed to address or submit the final court disposition of his third arrest on February 28, 2006. The applicant, on appeal, asserts that he was not arrested three times but, rather, he was arrested only two times because the February 28, 2006 refers to the December 16, 2005 arrest. The FBI report indicates that the applicant was arrested or received on February 28, 2006, by the Santa Ana [California] Sheriff's Office, for Count 1, DUI alcohol/drugs; Count 2, DUI alcohol/0.08 percent; and Count 3, driving with privilege revoked, suspended. In accordance with court documents and as asserted by applicant on appeal, this entry of the FBI report relates to No. (2) above. The court documents addressed in No. (2) above reflect that on February 1, 2006, a hearing was held for sentencing of the applicant's jail stay. The court granted the jail stay at the Orange County Jail until February 28, 2006.

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>1</sup> "Penal Code 654. Duplicate provisions of code." Although the applicant, in this case, entered a plea of guilty to Count 2, the "court stays sentence" and did not order any form of punishment as to Count 2; therefore, the applicant was not convicted of Count 2 within the meaning of section 101(a)(48)(A) of the Act.