



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

OCT 19 2007

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IN RE:

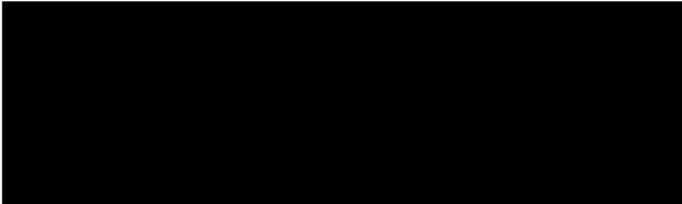
Applicant:



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 Vermont Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemam, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant had been convicted of a felony in the United States. The director, therefore, withdrew the applicant's TPS.

On appeal, the applicant states that she has been convicted of a single misdemeanor. The applicant also submits evidence in support of this claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation, if at the time of the initial registration period:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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. 8 C.F.R. § 244.1.

The record reveals:

1. On November 12, 2000, the Miami, Florida Police Department arrested the applicant for "Neglect Child-Child Neglect No Great Harm – Felony." On February 12, 2002, the charge was Nolle Prossed.
2. On June 12, 2005, Miami, Florida Police Department arrested the applicant for "Driving Under the Influence", and "Neglect Child-Child Neglect No Great Harm – Felony." On March 21, 2006, the applicant was found guilty of "Child Neglect/No Great Harm", a felony, and an order of withholding adjudication was issued. The applicant was also found guilty of "DUI/Accompanied by Minor in Vehicle," a misdemeanor.
3. On November 17, 2005, the applicant was arrested by the Miami, Florida Police Department for "Driving Under the Influence." On January 1, 2006, the charge was dismissed.

The applicant is ineligible for temporary protected status because of her felony conviction. 8 C.F.R. § 244.4(a).

On appeal, the applicant contends that the court withheld adjudication on the June 12, 2005 charge of "Neglect Child-Child Neglect No Great Harm – Felony." Therefore, she was not convicted of this charge. As counsel points out, the term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act. However, that section also states that any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or part. Section 101(a)(48)(B) of the Act.

Consequently, even though adjudication was withheld, it is deemed, for immigration purposes, that a period of incarceration or confinement was imposed. Accordingly, some form of punishment, penalty, or restraint on the alien's liberty has been imposed. Therefore, the applicant has been convicted of the felony, and is ineligible for temporary protected status because of this felony conviction. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for temporary protected status 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.