



U.S. Citizenship  
and Immigration  
Services

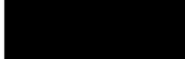
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FILE:



Office: California Service Center

Date: **SEP 04 2007**

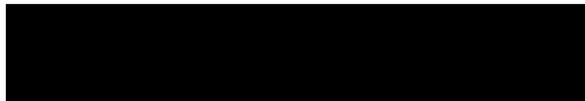
[WAC 06 214 50021, appeal]

[WAC 99 128 50910]

[WAC 06 115 51641]

IN RE:

Applicant:



APPLICATION:

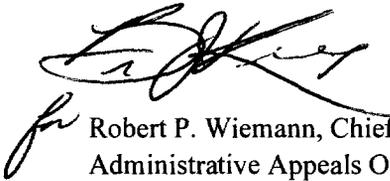
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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**DISCUSSION:** The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed an initial TPS application on March 3, 1999, under CIS receipt number WAC 99 128 50910. The director approved that application on March 24, 2000.

The director, however, withdrew TPS, on June 1, 2006, as the record of proceedings reveals that the applicant had been convicted of two misdemeanors.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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. See 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.

Final court dispositions in the record of proceedings reveal the following:

On October 26, 2001, the applicant was charged with Count 1: "INFLECTING CORPORAL INJURY ON A SPOUSE, COHABITANT, FORMER SPOUSE OR FORMER COHABITANT," in violation of Penal Code Section 273.5(a), a misdemeanor; and, Count 2: BATTERY ON SPOUSE, COHABITANT, PARENT OF CHILD, FORMER SPOUSE, FIANCE OR DATING RELATIONSHIP," in violation of Penal Code Section 242-243(e), a misdemeanor. On October 31, 2001, the Superior Court of California, County of Santa Clara County, California, convicted the applicant, on guilty pleas, of violating Section PC 273.5(a); and, violating Section PC 242/243(e). The applicant was sentenced to 3 years probation and 30 days jail, plus fines, costs, and the court imposed additional restrictions.

On appeal, counsel states that the two convictions were related to altercations with the applicant's girlfriend, and therefore, they should be treated as one conviction as both arose out of a single scheme of criminal conduct. In support of the appeal, the applicant submits additional evidence relating to some of the charges against him.

However, the record clearly shows that the applicant was convicted on guilty pleas of two separate offenses. Citizenship and Immigration Services (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).

On appeal, on behalf of the applicant, counsel states that the applicant's prior attorney failed to advise the applicant of the risks of pleading guilty to a second misdemeanor, to the applicant's detriment. However, counsel does not submit sufficient documentation required to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for action, or inaction, of the applicant's representative.

The court record establishes that the applicant was convicted of two misdemeanors, described above. The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application must be affirmed for this reason.

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.