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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 24 2007

[EAC 099 142 50895]

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 Director, Vermont Service Center, withdrew the approval of the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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.

The director withdrew the approval of the application because the applicant had been arrested on various occasions and had failed to provide the final dispositions for those arrests.

On appeal, the applicant submits several dispositions. He asks that his application be reopened because his family depends on him financially and will be adversely affected if his application is not approved.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for TPS 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.

The record reflects that on February 15, 2005, the applicant pleaded guilty, in the County Court of the State of New York, Nassau County, New York, to the following offense:

1. Criminal Facilitation in the 4th degree, under New York Penal Law (PL) § 115.00, for which he was sentenced to time served and three years probation.

The record reflects that on July 2, 2006, the applicant pleaded guilty, in the Amityville Village Justice Court, Amityville, New York, to the following offenses:

2. Disorderly Conduct, under New York PL § 240.20, for which he was sentenced to a fine; and,
3. Reckless Driving, under New York VTL § 1212, for which he was sentenced to a fine.

The record reflects that on February 25, 2006, the applicant pleaded guilty, in the Court of the City of New York, Queens County, New York, to the following offenses:

4. Driving While Impaired (DWI), under New York Vehicle and Traffic Law (VTL) § 1192.3, for which he was sentenced to one year conditional discharge and a \$500 fine; and
5. Harassment in the 2nd degree, under New York Penal Law (PL) § 240.26, for which he was sentenced to one year conditional discharge and a one year Order of Protection.

In New York, a conviction for Criminal Facilitation in the 4th degree is a Class A misdemeanor, and can result in a term of imprisonment of up to one year. A first-time conviction for Reckless Driving is a misdemeanor, and can result in a term of imprisonment of up to 30 days. A conviction for DWI is a misdemeanor, and can result in a term of imprisonment of up to one year. A conviction for Disorderly Conduct is classified as a violation, and can result in a term of imprisonment of up to 15 days. A conviction for Harassment in the 2nd degree is also a violation, and can result in a term of imprisonment of up to 15 days.

Under the Act, these five convictions are all considered misdemeanors, as they are crimes punishable by imprisonment for a maximum term of more than 5 days. Conviction of two or more misdemeanors makes a TPS applicant ineligible for TPS. The applicant is ineligible for TPS due to his record of five misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw the approval of the application will be affirmed.

An alien applying for TPS 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 that burden.

ORDER: The appeal is dismissed.