

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁



FILE:



Office: California Service Center

Date: SEP 25 2007

[SRC 99 262 52142]

[WAC 06 020 51045 – Appeal]

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DISCUSSION: Approval of the applicant's Temporary Protected Status was withdrawn by the Director, California Service Center (CSC), and the case is now before the Administrative Appeals Office (AAO) on appeal.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.

The record reveals that the applicant filed a TPS application on August 23, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 262 52142. The Texas Service Center (TSC) Director approved that application on April 8, 2000.

The CSC director withdrew the applicant's Temporary Protected Status on December 15, 2005, when it was determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors offenses committed in the United States.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; [REDACTED])

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;(emphasis added)

Further, 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. 8 C.F.R. § 244.1.

The record of proceedings contains copies of the final court dispositions revealing the following convictions:

- a) On November 27, 2000, the applicant pled guilty and was convicted of "Driving While Intoxicated", a misdemeanor. The applicant was sentenced to pay a fine of \$295.25 and 13 days in jail; and,
- b) On March 22, 2004, the applicant was convicted of "Assault," a misdemeanor. The applicant was to pay a fine of \$500.

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).

The applicant is ineligible for TPS due to his record of two misdemeanor convictions as detailed above. Consequently, the director's decision to withdraw the applicant's 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.