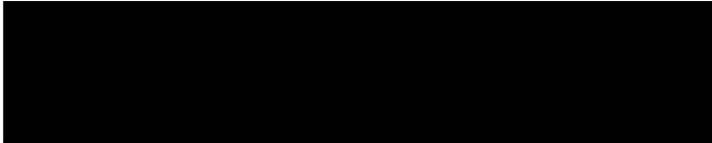




**U.S. Citizenship  
and Immigration  
Services**

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prevent clearly unwarranted  
invasion of personal privacy



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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[EAC 06 246 50230; appeal]  
[WAC 99 19952931]

Date: FEB 01 2008

INRE: Applicant: [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: SELF-REPRESENTED

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected-Status (TPS) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO), on appeal.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 TPS on April 19, 2000, by the Director, California Service Center. The VSE Director subsequently withdrew the applicant's status and denied the re-registration application on August 2, 2006, when it was determined that the applicant had been convicted of "Possession of Narcotics or Controlled Substance" in the United States.

On appeal, the applicant states that the director inaccurately characterized his conviction as he was placed on "deferred entry of judgment, with no incarceration time required." The applicant states that he was submitting a brief and/or evidence to the AAO within 30 days. However, no brief or additional evidence was submitted. Therefore, the record is considered complete.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 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 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.
- (g) Has filed an application for late registration with the appropriate Service director within a **60-day** period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define "**felony**" and "misdemeanor" as:

*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 August 30, 2005, the applicant was convicted by a Judge in the Superior Court of California in the County of Los Angeles of the possession of a narcotic controlled substance, a felony. (Case Number [REDACTED])

age "

On appeal; the applicant states that the director inaccurately characterized his conviction as he was placed on deferred entry of **judgment**, with no incarceration time required.

Under section 101(a)(48) of the Act:

- (A) The term "conviction" **means**, with respect to an **alien**, a formal judgment of guilt of the alien entered by a court or, if 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.
- (B) 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 in part.

The record reflects that the applicant pled guilty to the possession of a narcotic controlled substance charge and that his plea was accepted by the Court on August **30**, 2005. The Judge ordered some forms of punishment, penalty, or restraint on the **applicant's** liberty including that he participate in a program of **education**, treatment or rehabilitation aimed at drug **abuse**, as directed by a probation officer, that he keep his probation officer advised of his residence, work and home telephone numbers at all times, and that he report to a probation officer forthwith at an intake office in Los Angeles. It is determined that the director accurately characterized the **applicant's** August 30, 2005 conviction under section 101(a)(48) of the Act:

The applicant is ineligible for TPS due to a felony conviction and for being convicted of a crime relating to a controlled substance. Sections 244(c)(2)(B)(i) and 212(a)(2)(A)(i)(II) of the Act, and 8 C.F.R § 244.4(a). Consequently, the **director's** decision to withdraw TPS will be affirmed for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited 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.