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

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FILE:

[REDACTED]  
[SRC 99 172 55148]  
[EAC 0624982337]

OFFICE: VERMONT SERVICE CENTER

DATE:

JAN 03 2008

INRE:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, withdrew the applicant's TPS and denied her application for re-registration. The matter is now before the Administrative Appeals (AAO) Office on appeal.

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

The director withdrew approval of TPS and denied the applicant's Form 1-821, Application for Temporary Protected Status, for re-registration because the applicant has been convicted of at least two misdemeanors.

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)(I).

On appeal, counsel asserts that the applicant was not convicted and that the charges against the applicant would be "voluntarily" dismissed.

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
- (t)
  - (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 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 regulation at 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reflects that the applicant appeared in Durham County (North Carolina) District Court on July 18, 2006, charged with a violation of North Carolina General Statutes 14-318.2, child abuse, and 14-277-1 communicating threats, both of which are misdemeanors and both of which carry maximum sentences of 60 days confinement. Prosecution on the charges was deferred and the applicant was placed on supervised

probation for 12 months. The applicant was also ordered to have no contact with her daughter except with the consent of the Durham County Department of Social Services and to complete an approved parenting skills program.

On appeal, counsel submits a letter from the attorney who represented the applicant during her criminal proceedings and a copy of the deferred prosecution agreement dated July 18, 2006. The agreement indicates that the prosecution would take a voluntary dismissal of the case upon the applicant's compliance with the agreement. Counsel has not provided evidence that the prosecution has dismissed the case, which he was expected to do on July 17, 2007.

Nonetheless, although prosecution of the charges was deferred pending the applicant's successful completion of probation, for immigration purposes, the applicant stands convicted of two misdemeanor offenses. Section 101(a)(48) of the Act provides:

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.

By the terms of the deferred prosecution agreement, which was approved by the court on July 18, 2006, the applicant was placed on 12 months probation and ordered to have no contact with her child except with the consent of the Durham County Department of Social Services. Thus, the applicant's liberty was restrained. In addition, the applicant admitted responsibility for the crimes and stipulated to the facts of the charging document.

Accordingly, the applicant has been convicted of two misdemeanors for immigration purposes. Additionally, the applicant has not submitted evidence that she successfully completed probation or that the charges were dismissed. The director's decision to withdraw approval of the initial application for TPS and deny the application for re-registration is therefore 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.