



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 09 2008
[WAC 99 207 52792]

IN RE: 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the California Service Center. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

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, on January 13, 2000. The director subsequently withdrew the applicant's TPS status on September 27, 2005, after determining that the applicant had been convicted of a felony or two or more misdemeanor offenses.

The director may withdraw the status of an alien granted TPS at any time if it is found 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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, counsel submits a statement and court documents relating to his arrest.

An alien shall not be eligible for temporary protected status 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 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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a notice of intent to withdraw was issued on August 25, 2005, requesting that the applicant submit the final court disposition of his arrest on November 4, 2003, as listed on the FBI report. In response, the applicant submitted the requested court documents. The director determined that the applicant was ineligible for TPS because he had been convicted of a felony or two or more misdemeanors, and withdrew the applicant's TPS status on September 27, 2005.

On appeal, counsel asserts that the applicant has not been convicted of a felony offense because the charge was amended to a misdemeanor, and the applicant pled guilty to the misdemeanor offense. He resubmits the court disposition of the applicant's arrest.

The record indicates that on November 4, 2003, in the General District Court, Fairfax County, Virginia, Case No. [REDACTED] (arrest date November 3, 2003), the applicant was indicted for "possession of burglarious tools, implements or outfit with the intent to commit burglary, robber, or larceny," in violation of Virginia Statute 18.2-94, a felony. The felony charge was subsequently reduced to § 18.2-96 "petit larceny," a misdemeanor offense. On January 6, 2004, the applicant entered a plea of guilty to the misdemeanor offense of petit larceny, and the court found him guilty of the lesser-included offense. His jail sentence of 180 days was suspended, conditioned upon good behavior, and he was ordered to pay \$245 in fines and costs. The applicant, in this case, was convicted of only one misdemeanor offense; therefore, the finding of the director that the applicant was convicted of a felony or two or more misdemeanors will be withdrawn.

The applicant's one misdemeanor conviction does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations at 8 C.F.R. § 244.4(a), as an alien who has been convicted of a felony or two or more misdemeanors committed in the United States. There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's Temporary Protected Status will, itself, be withdrawn, and the application will be approved.

The burden of proof is upon the applicant to establish 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 met that burden.

ORDER: The appeal is sustained and the application is approved.