



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 01 2008**  
[EAC 08 032 51983, *appeal*]  
[SRC 99 218 52367]

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:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be a native and citizen of Honduras who was granted TPS on April 20, 2000. The director subsequently withdrew the applicant's status on October 11, 2007, when it was determined that the applicant had **failed** to submit a final court disposition for his arrest on September 5, 2000 for "ATTEMPT AND CONSPIRACY DRUGS."

On appeal, counsel acknowledges that the applicant was arrested but argues that no charges were placed against him. Counsel further **states** that one of the alleged aliases noted by the director in his decision is his brother's name and that this brother was charged with the offense stated on the applicant's denial letter. On appeal, counsel stated that she would submit brief and/or additional evidence to the AAO within 30 days; however, she has not done so. 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 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The applicant's Federal Bureau of Investigation fingerprint results report shows that on September 5, 2000, he was arrested by the Drug Enforcement Agency in Seattle, Washington, and charged with the crime of attempt and conspiracy under the Controlled Substances Act, 21 U.S.C. § 846.

On June 27, 2007, the director requested the applicant furnish a final court disposition for his September 2, 2000 arrest. The applicant responded by submitting a letter from a law office acknowledging that the applicant had been arrested but indicating that he had been released the same day and that a court date for him was never set nor was he ever charged. This document is of little probative value as it is not substantiated by information from either the arresting agency or the court where the applicant would have been prosecuted. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS is affirmed.

Furthermore, the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of her birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Additionally, after review of the record, it is determined that the applicant has not provided sufficient evidence establishing his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. §§ 244.2 (b) and (c). Consequently, TPS shall be withdrawn for these additional reasons.

The approval of TPS is withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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.