



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **APR 10 2006**

[WAC 99 101 52092]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

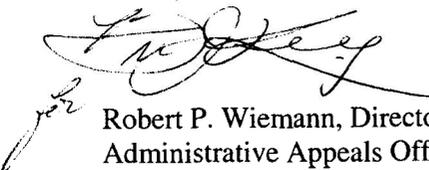
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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, Director  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 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, on September 14, 1999. The director subsequently withdrew the applicant's TPS on June 1, 2005, when it was determined that the applicant had been convicted of two or more misdemeanors.

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).

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 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.

The record reveals the following offenses:

- (1) On April 13, 1995, in the Municipal Court of Long Beach Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 6, 1995), the applicant was indicted for Count 1, hit and run/property damage, 20002(a) VC, a misdemeanor; and Count 2, proof of financial responsibility/accident scene, 16025(a) VC, an infraction. On May 22, 1995, the applicant entered a plea of *nolo contendere* as to Count 1, and the court found the applicant guilty of Count 1. He was placed on probation for a period of one year, and was ordered to pay \$956 in fines and costs. Count 2 was dismissed.
- (2) On September 9, 1998, in the Municipal Court of Long Beach Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date September 5, 1998), the applicant was indicted for Count 1, give false information to a peace officer, 31 VC, a misdemeanor; and Count 2, unlicensed driver, 12500(a) VC, a misdemeanor. On September 17, 1998, the applicant entered a plea of *nolo contendere* as to Count 1, and the court found the applicant guilty of Count 1. He was placed on probation for a period of one year, and was ordered to pay \$971 in fines and costs. Count 2 was dismissed.

- (3) The Federal Bureau of Investigation fingerprint results report shows that on July 6, 1992, in Manhattan Beach, California, the applicant, under the name of [REDACTED] was arrested for "POSSESS ETC BURGLARY TOOLS." The final court disposition of this arrest is not included in the record.

On appeal, the applicant asserts that both charges (Nos. 1 and 2 above) were dismissed after he was placed under summary probation for one year and sentences were suspended. He further asserts that he left the scene of the accident because the person who hit him behaved violently, and that he did not violate the traffic regulation because he was not the one who caused the car accident.

There is no evidence that the charges (detailed in Nos. 1 and 2 above) were dismissed as claimed by the applicant. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, notwithstanding the fact that the applicant's sentences were suspended, the record reflects that the applicant entered a plea of *nolo contendere* and the judge ordered some form of punishment (one year of probation and \$956 in fines and costs as to No. 1 above; and one year of probation and \$971 in fines and costs as to No. 2 above). Therefore, the applicant had been convicted within the meaning of section 101(a)(48)(A) of the Act.

Furthermore, even if the applicant's convictions were dismissed as the applicant claims on appeal, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

While the applicant asserts, on appeal, that he did not did not violate the traffic regulation because he did not cause the car accident, the court record clearly shows the applicant was convicted of the offense (No. 1 above). The Service is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, the Service may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS 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.