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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



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

M L



FILE:

[SRC 99 256 50415]

Office: TEXAS SERVICE CENTER

Date: **JUL 07 2006**

IN RE:

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

The director denied the application because the applicant had been convicted of either a felony or two or more misdemeanors.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a letter dated February 22, 2005 indicating that motions have been filed to vacate two of his misdemeanor convictions. The letter states that actions have been taken to obtain a hearing date so the process can be furthered to vacate the applicant's plea concerning a third misdemeanor conviction. The applicant requested that any action be forestalled until his motions in criminal court can be resolved.

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 is eligible for TPS if the 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 that is pending or subject to further review or appeal;
- (iii) The applicant is a parolee or has a pending request for reparation; 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. 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 the following offenses:

1. On October 14, 1997, the applicant was convicted of theft (Case Number [REDACTED] a misdemeanor, by a presiding judge in Miami-Dade County, Florida.)
2. On March 24, 1998, the applicant was convicted of driving under the influence of alcohol or drugs, (Case Number [REDACTED] a misdemeanor, by a presiding judge in Miami Beach, Florida.)

3. On January 21, 1999, the applicant was convicted of offering to commit prostitution, (Case Number [REDACTED]), a misdemeanor, by a presiding judge in Miami-Dade County, Florida.
4. On February 2, 2000, the applicant was convicted of offering to commit prostitution (Case Number [REDACTED]), a misdemeanor, by a presiding judge in Miami-Dade County, Florida.

It is noted that the applicant's Federal Bureau of Investigation fingerprint results report shows that on February 8, 1997, the applicant was arrested by the Metro-Dade Police Department for petty larceny. However, the final court disposition of this arrest is not included in the record of proceeding.

On appeal, the applicant indicates that he is trying to have three of his misdemeanor convictions removed by his record by having his pleas in those case vacated. The applicant has not submitted evidence that any of his guilty pleas have been vacated and even had that been accomplished, how that fact would change the outcome of this case.

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