

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

ML

FILE:

[EAC 99 151 51780]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 13 2007

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:

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, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status on October 28, 1999. The director subsequently withdrew the applicant's Temporary Protected Status on May 31, 2006, when it was determined that the applicant had been convicted of two misdemeanors.

The director may withdraw the status of an alien granted Temporary Protected Status 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)(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. See 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.
8 C.F.R. § 244.1.

The record of proceeding reveals the following offenses:

1. The applicant was convicted in the Hillsborough Superior Court-South District, Nashua, New Hampshire, of receiving stolen property, a misdemeanor offense, on January 10, 2003.
2. The applicant was convicted in the Nashua District, Nashua, New Hampshire, of criminal threatening, a misdemeanor offense, on January 5, 2004 ([REDACTED])

On appeal, the applicant states that he is eligible for TPS in that he has been convicted of one misdemeanor and that the other 2002 offense was nolled prosequi.

Contrary to the applicant's claim, the record of proceeding shows that the applicant was originally charged with felony receipt of stolen property – which was nolled prosequi– but, was found guilty of a lesser included offense of receiving stolen property. The record also shows that the applicant was found guilty of criminal threatening. The charges in the instant case are considered misdemeanor offenses as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of two misdemeanor offenses, and therefore, the director's decision to withdraw the approval of the TPS application 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.