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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**

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FILE:

Office: VERMONT SERVICE CENTER
[EAC 07 224 50448 Appeal]
[WAC 99 231 51366]

Date: JAN 29 2008

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 Vermont Service Center. 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 Director, Vermont Service Center (VSC), withdrew the applicant's previously granted Temporary Protected Status (TPS) and denied the application for re-registration. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted TPS on February 16, 2000. The director subsequently withdrew the applicant's status on June 26, 2007, when it was determined that the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, the applicant states:

Case 06/1998: When I came to U.S.A. I was forced to work as a prostitute for the person who smuggled me into the country to pay for his services due to I had not enough money to pay for. Since that time I had said qualification on my person.

Case 09/2000: I have no chance to get the massage therapist license because I had no legal papers. So I need to work to support my daughter and my self. That was the reason that I had been fined and charged.

Case 06/2003: This time the misdemeanor charges were the same of 09/2000.

Case for 2/2006: At this time I was charged again as a prostitute by a police officer at a massage parlor. The officer explain to that will charge as a prostitute (Not as parlor owner because I wasn't) and that will be a minor offense and it wasn't in my case.

The VSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The VSC Director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

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 designated by the Attorney General 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 repatriation; 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.

The record reflects the following offenses:

- (1) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on June 12, 1998, she was arrested by the Los Angeles Police Department for disorderly conduct (prostitution), a misdemeanor.
- (2) On May 8, 2003, the applicant was convicted by a Judge in the Superior Court of California in the County of Los Angeles of acting as a masseuse without a permit, a misdemeanor. (Case Number [REDACTED])
- (3) On June 11, 2003, the applicant was convicted by a Judge in the Superior Court of California in the County of Los Angeles of acting as a masseuse without a permit, a misdemeanor. (Case Number [REDACTED])
- (4) On October 1, 2003, the applicant was convicted by a Judge in the Superior Court of California in the County of Los Angeles of being unlawfully engaged in the massage business, a misdemeanor. (Case Number [REDACTED])
- (5) The applicant's FBI fingerprint results report shows that on March 20, 2006, she was arrested by the Los Angeles Police Department and charged with "SUPV/ETC PROSTITUTION."

On appeal, the applicant states that various reasons for her arrests and convictions. However her statements do not mitigate the above criminal activity.

The applicant is ineligible for TPS due to her record of three misdemeanor convictions, detailed above (Items #2, #3 and #4). Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS 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.