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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[WAC 05 229 72783]

Date: OCT 01 2009

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed the current TPS re-registration application on May 19, 2005, under receipt number WAC 05 297 72783. The Director, California Service Center, approved that application on August 4, 2005.

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).

The director withdrew the applicant's TPS because the applicant had been convicted of two or more misdemeanors.

8 C.F.R. § 244.1 defines "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 reveals the following offenses:

- (1) On March 24, 2002, the applicant was arrested by the Midland County, Texas Sheriff's Office for assault/simple family violence.

- (2) On May 11, 2002, the applicant was arrested by the Midland County, Texas Sheriff's Office for assault family violence.
- (3) On September 3, 2005, the applicant was arrested by the Midland County, Texas Sheriff's Office for assault family violence.
- (4) On June 4, 2008, the Midland, Texas Police Department arrested the applicant for driving while intoxicated.
- (5) On February 22, 2003, the applicant was arrested in Midland, Texas for assault family violence.

Pursuant to a notice dated January 11, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted documentation regarding the arrests. According to the court documentation provided by the applicant, on March 29, 2002, and May 12, 2002, the applicant pled guilty to assault/simple family violence, a violation of Texas Penal Code section 22.01, Class C Misdemeanors; on September 4, 2005, the applicant pled no contest to assault family violence, a Class C Misdemeanor; on June 16, 2005, the applicant was convicted of driving while intoxicated, a violation of Texas Penal Code section 49.04, a Class B Misdemeanor; and on February 24, 2003, the applicant pled *nolo contendere* to assault family violence, a Class C Misdemeanor.

On appeal, counsel for the applicant asserts that the applicant had been convicted of only one misdemeanor. According to counsel, the assault charges were Class C misdemeanors and were punishable only by fines, with no possible jail time. Based on the supporting information provided by counsel, and the Texas Penal Code, section 12.23, it is established that Class C misdemeanors in Texas are only punishable by fines not to exceed \$500.00. Therefore, these convictions cannot be considered misdemeanors for immigration purposes.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains an arrest summary report and court documentation from Midland County, Texas, which reflects that on September 29, 2007, the applicant was arrested for driving while intoxicated, a violation of Texas Penal Code section 49.04, a Class B Misdemeanor. On November 1, 2007, the applicant was convicted of this offense.

The applicant is ineligible for temporary protected status because of his two Class B misdemeanor convictions. 8 C.F.R. § 244.4(a).

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.