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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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APR 01 2010

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
[WAC 99 157 51291]

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:
[REDACTED]

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 or reopen, 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter 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 withdrew TPS because the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, counsel asserts, "the statute does not provide for withdrawal of TPS status for convictions after a grant of TPS. Rather, TPS may only be withdrawn if the Applicant was not eligible for TPS at the time that TPS was originally granted."

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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 FBI report dated April 1, 2009, reveals the following offenses in the state of Nevada:

1. On February 17, 2001, the applicant was arrested by the Las Vegas Metropolitan Police Department for driving under the influence, a violation of NRS 484.379-2 and possession of dangerous drug without prescription, a violation of NRS 454.316, a felony. On June 15, 2001, the applicant pled guilty to the driving under the influence offense. The applicant was sentenced to serve time in jail, ordered to pay a fine and attend a driving under the influence school. The outcome of the drug offense was not listed.
2. On May 14, 2003, the applicant was arrested by the Las Vegas Metropolitan Police Department for driving under the influence.
3. On September 20, 2003, the applicant was arrested by the North Las Vegas Police Department for open alcohol container in vehicle, driving while license is revoked

possession of drug paraphernalia, unregistered vehicle, proof of insurance required and failure to signal.

4. On July 10, 2004, the applicant was arrested by the Las Vegas Metropolitan Police Department for driving under the influence.
5. On September 12, 2004, the applicant was arrested by the Las Vegas Metropolitan Police Department for driving under the influence, driving while license is suspended and open alcohol container in vehicle.
6. On November 25, 2004, the applicant was arrested by the Las Vegas Metropolitan Police Department for felony driving under the influence and driving while license is revoked.
7. On March 24, 2005, the applicant was arrested by the Las Vegas Metropolitan Police Department for felony driving under the influence.
8. On March 30, 2005, the applicant was arrested by the Las Vegas Metropolitan Police Department for driving under the influence, driving under the influence of a controlled substance, two counts of driving while license is revoked and open alcohol container in vehicle.

The FBI report also reflects that on August 14, 2008, a warrant ([REDACTED]) was issued for a driving under the influence charge that is still outstanding.

In response to the Notice of Intent to Withdraw TPS issued on April 2, 2009, counsel submitted the following court dispositions, which reflected:

- On January 20, 2000, the applicant was arrested for stopping suddenly without signal. The applicant was subsequently charged with prohibit park general sidewalk/driveway/ etc., a violation of NRS 484-399. On June 7, 2000, the applicant pled *nolo contendere* to the charge. The applicant was ordered to pay a fine and attend traffic school. [REDACTED]
- On May 27, 2000, the applicant was arrested for driving under the influence of alcohol. The applicant was subsequently charged with reckless driving, a violation of NRS 484.377. On April 24, 2001, the applicant pled *nolo contendere* to the charge and was ordered to pay a fine. [REDACTED]
- On September 18, 2001, the applicant was arrested for no motorcycle drivers license in possession, a violation of NRS 486.361, and violate instruction permit requirements, a violation of NRS.484.280. On June 12, 2003, the applicant pled guilty to both offenses and was sentenced to serve 15 days in jail for each offense. [REDACTED]
- On May 14, 2003, the applicant was arrested for suspended registration, a violation of NRS 482.545-1. On June 12, 2003, the applicant pled guilty to the offense and was ordered to serve 15 days in jail. [REDACTED]

- On May 14, 2003, the applicant was arrested for head lamps hours of operation and driving on a suspended/cancelled/revoked license. The applicant was subsequently charged with prohibit park general sidewalk/driveway/ etc., a violation of NRS 484-399, and driving without a valid license, a violation of NRS 483.560. On June 12, 2003, the applicant pled guilty to both offenses and was ordered to serve 15 days in jail for each offense. [REDACTED] and [REDACTED]
- On July 10, 2004, the applicant was arrested for red traffic signal-position/method, a violation of NRS 484-283, driving on right half of roadway, a violation of NRS 484-291, and driving under the influence, a violation of NRS 484.379-1. On April 13, 2005, the applicant pled guilty to all offenses. The applicant was ordered to serve 28 days in jail for violating NRS 484.283 and NRS 484-291 and 180 days for violating NRS 484.37901. [REDACTED] and [REDACTED] It is noted that these cases relate to number eight above as the dispositions indicate that the applicant was in custody at the Stewart/Mojave jail on March 30, 2005.
- On September 12, 2004, the applicant was arrested for driving on a revoked license, a violation of NRS 483.560, open alcoholic container in vehicle, a violation of NRS 484-448-2, driving under the influence of alcohol, a violation of NRS 484.379-1, and red traffic signal-position/method, a violation of NRS 484-283. On April 13, 2005, the applicant pled guilty to all offenses. The applicant was ordered to serve 60 days in jail for violating NRS 483.560 and NRS 484.379-1 and 28 days for violating NRS 484.283 and NRS 484-448-2. [REDACTED] and [REDACTED]. It is noted that these cases relate to number eight above as the dispositions indicate that the applicant was in custody at the Stewart/Mojave jail on March 30, 2005.
- On November 25, 2004, the applicant was arrested for driving under the influence of alcohol and/or drugs, a violation of NRS 484.379-1, failure to drive in travel lane, a violation of NRS 484-305.1, and driving on a revoked license, a violation of NRS 483.560. On April 14, 2005, the applicant pled guilty to all offenses. The applicant was ordered to serve 28 days in jail for violating NRS 484.379-1 and NRS 484.305-1 and 60 days for violating section NRS 483.560. [REDACTED] [REDACTED] and [REDACTED] It is noted that these cases relate to number eight above as the dispositions indicate that the applicant was in custody at the Stewart/Mojave jail on March 30, 2005.
- On December 19, 2007, the applicant was arrested for no drivers license in possession, a violation of NRS 484.550-1 and prohibit park general sidewalk/driveway/ etc., a violation of NRS 484-319. On September 3, 2008, the applicant pled *nolo contendere* to each offense and was ordered to pay a fine. [REDACTED] [REDACTED] and [REDACTED]

The director may withdraw the status of an alien granted TPS 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). As such, counsel's assertions on appeal have no merit.

The applicant is ineligible for TPS because he has been convicted of at least two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant is also ineligible for TPS due to his failure to submit the requested court documents for his arrests in numbers one, three, and seven above. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS will be affirmed.

The TPS will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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 from the withdrawal of TPS is dismissed.