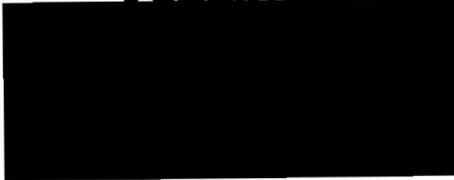




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 082 79121]
[WAC 99 139 50186]

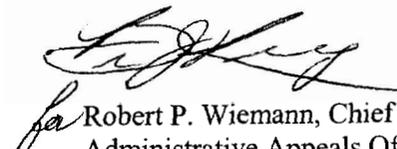
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 record indicates that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 99 139 50186. That application was approved on February 10, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 21, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant had been convicted of three misdemeanors committed in the United States.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found 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. Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on June 9, 2004, to submit the final court dispositions of any and all arrests, including his arrests listed in the FBI report. In response, the applicant submits the court dispositions of the following offenses:

- (1) On February 24, 2000, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date October 22, 1999), the applicant was convicted of Unlicensed Driver, 12500(a) VC, a misdemeanor. He was ordered to pay \$260 in fines and costs.
- (2) On July 27, 2000, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date May 21, 2000), the applicant was convicted of Unlicensed Driver, 12500(a) VC, a misdemeanor. He was placed on probation for a period of 36 months, and ordered to pay \$395 in fines and costs.
- (3) On July 23, 2004, in the Superior Court of California, County of Ventura, Case No. [REDACTED] (arrest date October 31, 2003), the applicant was convicted of Hit-run Driving, 20002(a) VC, a misdemeanor. He was ordered to pay \$180 in fines and costs.

On appeal, the applicant asserts that the denial was in error because he was convicted for violations of the California Vehicle Code [VC] and are considered infractions, not misdemeanors. He further asserts that two of the charges were from the same incident and "should not be counted as 2 separate items."

The applicant's assertions, on appeal, are without merit. Section 40000.11 VC states that a violation of section 12500(a), relating to unlicensed drivers, "is a misdemeanor, and not an infraction." Furthermore, section 42002 of the California Vehicle Code states:

Unless a different penalty is expressly provided by this code, every person convicted of a misdemeanor for a violation of any of the provisions of this code shall be punished by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

Likewise, according to § 20002 VC, any person failing to comply with all the requirements of this section is guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine no exceeding \$1000, or both.

Because the applicant was convicted of crimes for which he could have received a jail sentence of more than five days, he has, for immigration purposes, been convicted of misdemeanors [12500(a) VC and 20002(a) VC]. 8 C.F.R. § 244.1. Additionally, the court determined these offenses to be misdemeanors, the applicant was indicted for the misdemeanor offenses, and the court subsequently convicted the applicant of the misdemeanor offenses of 12500(a) VC and 20002(a) VC.

Furthermore, although the applicant claims that two of the charges were from the same incident, and "should not be counted as 2 separate items," he failed to identify which two of the three convictions he is claiming should not be counted as separate offenses. The record, in this case, shows that the applicant was charged with three separate offenses on three different dates, the offenses were assigned different case numbers, and the court found him guilty of three separate crimes. Accordingly, the applicant has been convicted of three separate and distinct misdemeanor offenses.

The applicant is ineligible for TPS due to his three misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the applicant's temporary protected status will be withdrawn.

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.