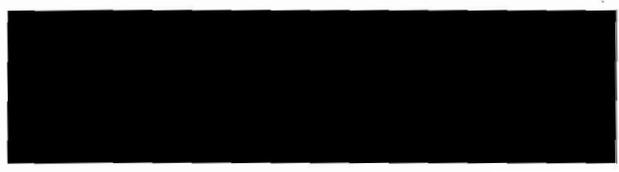




U.S. Citizenship
and Immigration
Services

identifying data deleted to
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invasion of personal privacy

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 18 2006
[WAC 05 089 71610]

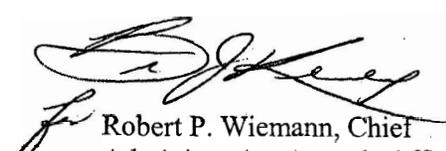
IN RE: Applicant: [REDACTED]

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 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 on February 25, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 101 50853. That application was approved on May 8, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that he was re-registering for TPS. The director denied the re-registration application because the applicant had been convicted of a felony 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In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application.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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record indicates that on June 29, 2000, in the Superior Court of California, County of Los Angeles, Case [REDACTED] (arrest date June 2, 2000), the applicant was indicted for Grand Theft: Property Over \$400, 487(a) PC, a felony. On September 14, 2000, the applicant entered a plea of *nolo* contendere to the crime of Grand Theft, and the court found the applicant guilty of the crime. He was placed on probation for a period of 3 years under the condition that he serve 90 days in the county jail, ordered to pay \$200 in fines, and to make restitution to the victim.

On appeal, the applicant submits court documents and asserts that his sentence was suspended, it was not a felony, and his probation has been terminated.

The records of the Court of California, County of Los Angeles, clearly shows that the applicant was indicted for the felony offense of Grand Theft, and the court found him guilty of a felony offense. Further, section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo* contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law **regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.** (Emphasis added.)

Notwithstanding the fact that the applicant's sentence was suspended, the record, in this case, indicates that the applicant entered a plea of *nolo* *conendere*, the judge found the applicant guilty of the offense, and the judge ordered some form of punishment (three years of probation, 90 days in jail, and \$200 in fines). The applicant, therefore, had been convicted within the meaning of section 101(a)(48)(A) of the Act. Furthermore, the fact that the applicant's probation has been terminated is not evidence that his conviction no longer exists.

Moreover, grand theft is a crime involving moral turpitude. *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964); *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974). Therefore, the applicant is inadmissible to the United States, pursuant to under section 212(a)(2)(A)(i)(I) of the Act, due to his felony conviction of a crime involving moral turpitude.

The applicant is ineligible for TPS due to his felony conviction, and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. 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.