

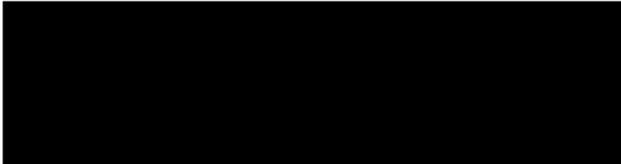


U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 20 2006

[WAC 05 090 72533]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The re-registration 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 99 196 52184. That application was approved on February 4, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, and indicated that she was re-registering for TPS.

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

In this case, however, the director should have withdrawn the applicant's TPS status rather than to deny the re-registration application.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 Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.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.

The record indicates that on May 1, 2001, in the Superior Court of California, County of Riverside, Case No. [REDACTED] (arrest date March 10, 2001), the applicant was convicted of Count 1, driving under the influence, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, a misdemeanor. She was placed on probation for a period of 36 months, under the condition that she be committed to the custody of "RSO" for 48 hours, pay \$1154 in fines and costs, attend and satisfactorily complete a First Offender DUI Program, and her license was restricted for a period of 3 months.

On appeal, the applicant asserts that the record is in error because she has only one conviction. The applicant subsequently submitted an order of the court permitting the applicant to withdraw the previously entered plea of guilty, a plea of not guilty was entered, and the court dismissed the complaint in Case No. RIM 406277, pursuant to Penal Code § 1203.4.

The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), determined that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, despite the dismissals or expungements of the convictions, the applicant remains convicted, for immigration purposes, of the two misdemeanors detailed above.

The applicant is ineligible for TPS based on her two misdemeanor convictions. 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.