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U.S. Citizenship
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FILE:



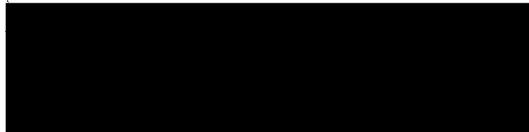
Office: CALIFORNIA SERVICE CENTER

Date: NOV 06 2000

[SRC 99 255 53762]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied and the TPS status of the applicant was withdrawn by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a citizen and national 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 his initial TPS application on August 19, 1999. The Director, Texas Service Center, approved that application on June 23, 2000.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on January 7, 2005, and indicated that he was re-registering for TPS.

The director denied the applicant's re-registration application on February 22, 2006, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his convictions of three misdemeanors committed in the United States.

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 of proceedings contains the Federal Bureau of Investigation report reflecting that the applicant was arrested for the following:

- 1) On February 7, 1993, the applicant was arrested by the Metro-Dade, Florida Police Department and charged with "Damage Prop-Crim Misch";

- 2) On February 17, 2000, the applicant was arrested by the Metro-Dade, Florida Police Department and charged with "BW Business Conduct without License County Ord";
- 3) On August 16, 2000, the applicant was arrested by the Metro-Dade, Florida Police Department and charged with "Larceny - Grand Theft 3rd Degree";
- 4) On November 22, 2000, the applicant was arrested by the Metro-Dade, Florida Police Department and charged with "DWLS" and "BW - Driving While License Suspended";
- 5) On February 15, 2003, the applicant was arrested by the Collier County Sheriff's Office, Florida and charged with "Fraud - Insuff Funds Check";
- 6) On July 28, 2003, the applicant was arrested by Metro-Dade, Florida Police Department and charged with "BW Driving While License Suspended" and "Driving While License Suspended with Knowledge"; and,
- 7) On September 8, 2003, the applicant was arrested by the OPA Locka, Florida Police Department and charged with "Business Conduct without a License.

On September 8, 2005, the director sent a notice of intent to withdraw the applicant's TPS status based on the applicant's past arrests as detailed above.

The applicant responded to the notice and submitted additional evidence and the final court dispositions regarding his past arrests. Based on the record of proceedings, the director determined that the applicant had been convicted of a felony or 2 or more misdemeanor offenses as indicated in Nos. 1 and 3 above; and therefore, withdrew the applicant's TPS status on February 22, 2006.

On appeal, the applicant states that the court withheld adjudication on both of these cases and that he did not serve any time in jail. The applicant did not submit any additional evidence along with his appeal.

A review of the court disposition from the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida reveals that the applicant pled guilty to "Grand Theft 3rd Degree", Florida Statute 812.014 (2)(c), a felony. The applicant was placed on probation for 2 years and was order to make restitution in the amount of \$1630 to the victim. It is noted that the director erred in stating that this offense was a misdemeanor.

Therefore, the director's decision to deny the applicant's TPS status will be affirmed, and the applicant remains ineligible for TPS.

It is also noted that the applicant was ordered deported from the United States by an Immigration Judge at Miami, Florida on August 21, 1995. In addition, the applicant was deported from the United States by an Immigration Judge at Miami, Florida on May 6, 1997. The record contains a Warrant of Removal/Deportation issued at Miami, Florida, on May 13, 1997, based upon that final order of removal.

Further, pursuant to 8 C.F.R. § 244.14(a) and (c), Withdrawal of Temporary Protected Status;

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; 63 FR 63593)

(c) Decision by AAU. If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 244.10(d).

The applicant's convictions have rendered him ineligible for TPS status. Therefore, in accordance with 8 C.F.R. § 244.14, the applicant's TPS status, which was granted on June 23, 2000, is hereby 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 and the applicant's TPS is hereby withdrawn.