



U.S. Citizenship
and Immigration
Services

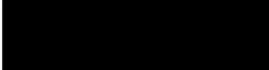
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FILE:



OFFICE: INDIANAPOLIS

DATE: NOV 17 2006

[LIN 99 133 52352]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Indianapolis, Indiana, 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on January 24, 2000. The district director subsequently denied the TPS application on June 19, 2003, when it was determined that the applicant had been convicted of two misdemeanor offenses.

In this case, however, the district director should have withdrawn the applicant's TPS status rather than deny the application.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 Accordingly, the decision of the district director to deny the application will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.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. 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 shows that on July 20, 1999, in the Elkhart City Court, City of Elkhart, Indiana, Cause No. [REDACTED] the applicant was indicted for Count 1, false informing, IC Code 35-44-2-2, a misdemeanor; and Count 2, battery, IC Code 35-42-2-1, a misdemeanor. On July 22, 1999, the applicant was convicted of both Counts 1 and 2. He was ordered to serve one year in the county jail, suspended on 12 months of probation, and to pay \$130 in fines and costs, as to Count 1. He was ordered to serve one year in the county jail, suspended on 12 months of probation, and to pay \$130 in fines and costs, as to Count 2.

On appeal, the applicant asserts that his legal rights were violated when he entered his guilty pleas. He states that he did not know the immigration consequences of his guilty pleas as he does not speak or understand English and there was no translator present in court.

The Administrative Appeals Office (AAO) is not the appropriate forum to determine constitutional issues involving the applicant's convictions. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, the AAO may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

According, the applicant is ineligible for TPS due to his two misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the district director's decision to withdraw the TPS application for this reason will be affirmed.

The record shows that a Warrant of Removal/Deportation, Form I-205, was issued in Chicago, Illinois, on July 7, 2003. On September 16, 2003, the applicant was interviewed by an asylum officer at the Chicago Asylum Office to determine "Reasonable Fear of Persecution or Torture" if he were to be removed from the United States and returned to his home country of Honduras. Based on that interview, it was determined that the applicant had not established reasonable fear of persecution or torture, and the applicant was subsequently removed from the United States on November 6, 2003.

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.