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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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OCT 31 2006

FILE:

[SRC 99 148 53983]
[WAC 05 089 79944]

Office: CALIFORNIA SERVICE CENTER

Date:

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:



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 by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who was granted Temporary Protected Status (TPS) on March 22, 2000, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Palm Beach County, Florida, on August 12, 2004, and charged with failure to secure payment of worker's compensation under \$20,000 in violation of FL 440.105 (4A3), a third-degree felony. On June 28, 2005, the applicant was requested to provide the final court disposition of his arrest. The applicant, in response, provided a document from the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida, indicating that the applicant pled guilty to this charge on September 15, 2004. The court withheld adjudication of guilt and placed the applicant on probation for a period of twelve months; suspended the applicant's driver's license for a period of 99 years; ordered the applicant to pay court costs in the amount of \$470; and, ordered the applicant to perform 25 hours of community service. (Case No. 04-010282CFA02).

The director denied the re-registration application and withdrew the applicant's Temporary Protected Status on January 10, 2006, because he found the applicant had been convicted of a felony.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:

- (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

As previously stated, the director denied the applicant’s re-registration application and withdrew his Temporary Protected Status on January 10, 2006, because he found the applicant had been convicted of a felony.

On appeal, counsel contends that the director erred in denying the applicant's re-registration application. Counsel states that adjudication of guilt was withheld and the applicant "did not serve any jail time or pay any penalty other than court costs." Counsel further asserts that the applicant "successfully completed one year probation" and is "in the process of having his plea withdrawn." Counsel requested an additional 180-day period in order for the applicant to file a motion to have his guilty plea withdrawn and "have his case heard by the state court." To date, counsel has not provided a court document indicating that the applicant ever filed a motion with the court to have his guilty plea withdrawn, or that such motion was granted by the court; therefore, the record will be considered complete.

Furthermore, even if the court were to grant a motion to withdraw the applicant's guilty plea because the applicant successfully completed his probation period, the fact remains that Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the **merits** are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

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. Section 101(a)(48)(A) of the Act.

In this case, the applicant pled guilty to a felony charge and his liberty was restrained in that he was placed on probation. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decisions to deny the re-registration application and withdraw the applicant's Temporary Protected Status for this reason will be affirmed.

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.