U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 1 4 2006

[WAC 05 047 72074]
[WAC 99 122 51647]

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 under Citizenship and Immigration Services (CIS) receipt number WAC 99 122 51647. That application was approved on January 31, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 16, 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 or two or more misdemeanors.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application.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 Accordingly, the decision of the director to deny the application for re-registration will be withdrawn, the case will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.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

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a notice of intent to withdraw TPS was issued on October 17, 2005, requesting that the applicant submit the final court dispositions of his

arrests listed in the FBI report. In response, the applicant submits the court disposition of the following offenses:

> On February 2, 2001, in the Superior Court of California, County of Los Angeles, Case No. (arrest date July 23, 2000), the applicant was indicted for Count 1, hit and run/property damage, 20002(a) VC, a misdemeanor; Count 2, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; Count 3, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 4, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 5, no proof of car insurance, 16028(a) VC, an infraction. On October 24, 2000, the applicant was convicted of Counts 1 and 3. The applicant was placed on probation for a period of 24 months as to Count 1. The applicant was placed on probation for a period of 36 months under the condition that he serve 15 days in the county jail, ordered to pay the total of $208 in fines and costs, to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and his driving was restricted for 90 days, as to Count 3. Counts 2, 4, and 5 were dismissed.

On appeal, counsel asserts that that although the applicant was convicted of two misdemeanor crimes, "these two convictions arose out a Single Scheme of Criminal Conduct;" therefore, the applicant did not commit two separate misdemeanor crimes but, rather, was convicted of one criminal act.

That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to his removability under section 237 of the Act, this determination has no bearing on his eligibility for TPS under section 244 of the Act. According to the court disposition, the applicant was charged with five separate offenses, he clearly pled *nolo contendere* to two separate crimes, the court found him guilty of two separate crimes, and the court issued two separate sentences. Therefore, the applicant had been convicted of two separate and distinct misdemeanor offenses. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

The applicant was convicted of two misdemeanors, detailed above; therefore, he is ineligible for TPS. 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.

The record shows that an Order to Show Cause and Notice of Hearing, Form I-221, was issued on July 18, 1990, in Los Angeles, California, based on the applicant's entry into the United States without inspection on or about February 3, 1989.

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.