

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

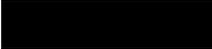


U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MI

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: **SEP 26 2006**
WAC 99 111 52688]
[WAC 05 800 17265]

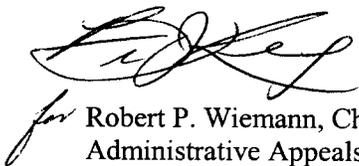
IN RE: Applicant: 

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.


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 on January 27, 1999, under Citizenship and Immigration Services (CIS) receipt number WAC 99 111 52688. That application was approved on February 17, 2000.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 30, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration application on January 9, 2006, because the applicant had been convicted of one felony and two misdemeanor offenses.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the re-registration application.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. 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, the applicant was requested on August 3, 2005, to submit the final court dispositions of any and all arrests, including his arrests listed in the FBI report. She was advised that the "final disposition should be obtained from the court, not the police

station, where the hearing took place.” In response, the applicant submits court records and police reports for the following offenses:

- (1) The La Paz County Sheriff's Department, Arizona, citation report (Citation Number [REDACTED] indicates that on November 26, 1999, the applicant was arrested for Count 1, speeding-86 MPH +, ARS 28-701.02A3; Count 2, violation of registration/no current registration, [REDACTED]; Count 3, driving while license suspended/revoked/cancelled, [REDACTED]; Count 4, motor vehicle financial responsibility requirement, [REDACTED]. The final court disposition of this arrest is not included in the record.
- (2) The La Paz County Sheriff's Department report indicates that a warrant for the arrest of the applicant was issued on September 9, 2000, for the misdemeanor offense of contempt of court on excessive speed, under Docket Number [REDACTED]. In another report from the Sheriff's Department (Booking Number 21850/Docket No. [REDACTED] the record shows that the applicant was subsequently arrested on September 26, 2000, for contempt of court, [REDACTED]. The applicant furnished a certified copy of the final disposition from the Quartzsite Justice Court, County of La Paz, Arizona, indicating that the applicant was convicted of this offense on September 27, 2000.
- (3) On September 27, 2000, in the Quartzsite Justice Court, County of La Paz, Arizona, Docket No. [REDACTED] the applicant was convicted of Count 1, driving while license suspended/revoked/cancelled, [REDACTED] a misdemeanor; and Count 2, violation of promise to appear, [REDACTED] a misdemeanor. She was ordered incarcerated in the county jail for 14 days, after serving time for [REDACTED] (No. 2 above), and to pay \$531 in fines.
- (4) The La Paz County Sheriff's Department citation report (Citation Number 16964) indicates that on December 22, 2001, the applicant was arrested for Count 1, driving while licenses suspended/revoked/cancelled/FTA/FTP, [REDACTED]; Count 2, motor vehicle financial responsibility requirement, [REDACTED] and Count 3, display/possession of fictitious registration/plate, [REDACTED]. The final court disposition of this arrest is not included in the record.
- (5) The La Paz County Sheriff's Department, Arizona, citation report (Booking Number [REDACTED] Case No. [REDACTED] indicates that on February 7, 2002, the applicant was arrested for theft of property, ARS 13-1802A5. The applicant also submitted a certified copy of the records of the Quartzsite Justice Court, County of La Paz, Arizona, indicating that the applicant was arrested on February 7, 2002, and charged with Count 1, theft-control of stolen property, [REDACTED] a felony; Count 2, forgery-possession of forged instrument, [REDACTED] a felony; and Count 3, trafficking in stolen property-2nd, [REDACTED] a felony. The court record shows “no complaint filed” as to Counts 1 and 3. However, the final disposition as to Count 2 is not reflected on the court record (Count 2 assigned Case Number [REDACTED]).
- (6) The La Paz County Sheriff's Department report indicates that a warrant for the arrest of the applicant was issued on August 1, 2002, for the misdemeanor offense of failure to appear on suspended license/fictitious plates, under Docket Number [REDACTED]. The outcome of this warrant is not included in the record.
- (7) The La Paz County Sheriff's Department, Arizona, citation report (Citation Number [REDACTED] indicates that on August 25, 2003, the applicant was arrested for driving while license suspended/revoked/cancelled, [REDACTED]. It appears that this citation report relates to the report listed in No. 8 below. However, the final court disposition of this arrest is not included in the record.

- (8) The La Paz County Sheriff's Department, Arizona, citation report (Booking Number [REDACTED] Case No. [REDACTED]) indicates that on August 25, 2003, the applicant was arrested for driving while license suspended/revoked, [REDACTED]. It appears that this citation report relates to the report listed in No. 7 above. However, the final court disposition of this arrest is not included in the record.
- (9) On September 11, 2003, in the Quartzsite Justice Court, County of La Paz, Arizona, Docket No. [REDACTED] the applicant was convicted of driving while license suspended, [REDACTED] a misdemeanor. She was ordered to pay \$100 in fines. It is not clear in the record whether this case relates to Nos. 7 and/or 8 above.

On appeal, the applicant asserts that she did try to comply with the director's requests, and that she is enclosing additional evidence. She submits copies of the Arizona Department of Public Safety warrant and incident reports relating to Nos. 2 and 5 above. The applicant, however, failed to submit the final dispositions of her arrests (listed in Nos. 1, 4, 5, 6, 7, and 8 above) from the court(s) where the cases were heard.

It is noted that the director determined that the applicant was convicted of a felony, detailed in No. 5 above. However, as noted above, the outcome of the applicant's felony indictment for forgery-possession of forged instrument, [REDACTED] is not shown on the court documents furnished by the applicant. Therefore, this finding of the director will be withdrawn.

However, the applicant is ineligible for TPS due to her record of at least four misdemeanor convictions (detailed in Nos. 2, 3, and 9 above), and because she failed to provide the final court dispositions of her arrests (detailed in Nos. 1, 4, 5, 6, 7, and 8 above). 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 on May 20, 1999, in Los Angeles, California, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.