

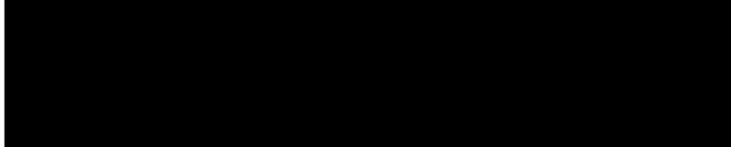


U.S. Citizenship
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FILE:

[EAC 99 147 50278]

Office: CALIFORNIA SERVICE CENTER

Date: APR 19 2007

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was initially approved. The approval was subsequently withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 reveals that the applicant was granted TPS on February 23, 2000. The Director, VSC, withdrew the approval of the TPS application on May 11, 2006, because the record of proceedings showed that the applicant had been convicted of two or more misdemeanors.

On appeal, counsel states that the applicant has been convicted of two misdemeanor counts of assault and battery, but that the convictions constitute a single act of criminal misconduct; having been committed twice on the same date.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

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 reveals the following offenses:

- On September 16, 2003, the applicant was convicted in the Commonwealth of Virginia of one count of assault and battery, a misdemeanor (case # [REDACTED])
- On September 16, 2003, the applicant was convicted in the Commonwealth of Virginia of one count of assault and battery, a misdemeanor (case # [REDACTED])

Counsel infers on appeal that since the applicant's misdemeanors arose in a single occasion and on the same day they should be considered a single misdemeanor offense. Contrary to counsel's statements, the fact that the criminal offenses arose from a "single scheme" does not preclude them from being counted as separate offenses. The applicant was charged with two separate misdemeanor offenses and he pled guilty to two separate misdemeanor offenses. Black's Law Dictionary, 243 (6th Ed., 1991), defines the term "count" to mean a separate and independent claim. It is also indicated that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the merger doctrine is not applicable for purposes of determining the applicant's eligibility for TPS because the applicant has been convicted of two separate and distinct misdemeanor offenses.

The applicant is ineligible for TPS due to his record of at least two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the application 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.