

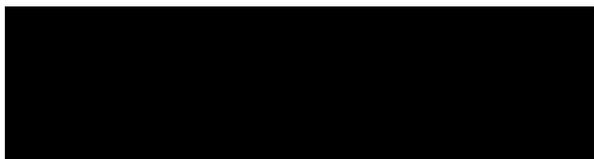
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: California Service Center Date: JUL 05 2007
[WAC 99 156 51762]

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: 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 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 filed an initial TPS application on April 28, 1999, under CIS receipt number WAC 99 156 51762. The director approved that application on April 3, 2000. The director, however, on September 18, 2006, withdrew the applicant's temporary protected status pursuant to 8 C.F.R. § 244.14(a)(3), 8 C.F.R. § 244.17(c). The director determined that final court dispositions submitted by the applicant revealed that the applicant had two misdemeanor convictions.

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 for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

On appeal, the applicant states that he has retained an attorney to set aside one of his convictions, and requested 60 days to submit a brief and/or evidence to establish his eligibility for TPS. However, the record does not reflect that the applicant has submitted any additional evidence. Therefore, the record must be considered complete.

After a review of the record, the Chief, AAO, concurs with the director's withdrawal decision. The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.14.

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 noted by the director, the applicant submitted final court dispositions which reflect that he has been convicted of at least two misdemeanors, thereby rendering him ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Specifically, the record reveals that:

- 1) On February 14, 2000, the Superior Court of California, County of Los Angeles, California, convicted the applicant, on a nolo contendere plea of a violation of Section "12500 (A) VC," a misdemeanor. The applicant was sentenced to 24 months probation and 5 days jail, plus \$201.00 fines; and,
- 2) On March 12, 2004, the Superior Court of California, County of Los Angeles, California, convicted the applicant, on a nolo contendere plea of a violation of Section "415 PC", a misdemeanor. The applicant was sentenced to 24 months probation and 2 days jail, plus \$215.00 fines and fees.

On appeal, the applicant asserts that he has retained an attorney to set aside one of the convictions, and will therefore, be eligible for TPS. However, as noted above, the applicant has not submitted any additional evidence on appeal.

The court record, however, clearly shows that the applicant was convicted of two misdemeanors, described above. Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has 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).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is other eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.