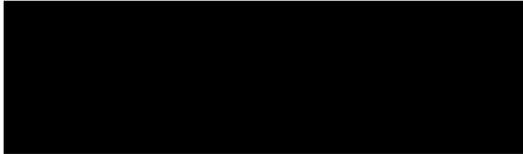




U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE: MAR 09 2007

[WAC 99 116 51958]

IN RE:

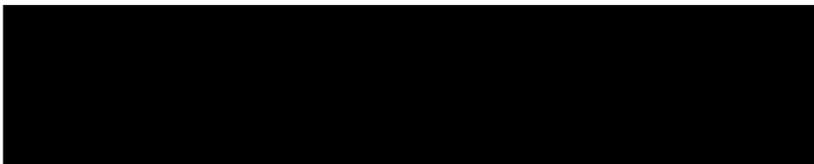
Applicant:



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 Director, California Service Center, withdrew the applicant's Temporary Protected Status. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The Form G-28, Notice of Entry of Appearance as Attorney or Representative, filed with the appeal is from Frank E. Ronzio and Tatiana Cantor of Ronzio & Associates. The appeal brief is signed by [REDACTED] who did not file a Form G-28 or indicate that he is associated with Ronzio & Associates. In accordance with the current Form G-28, the AAO will treat Mr. Ronzio and Ms. Cantor as the applicant's attorneys in this matter and send a copy of the decision to Ronzio & Associates.

The applicant claims to be a citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on July 30, 1999.

In a Notice of Decision dated June 28, 2005, the director denied the applicant's application for re-registration of TPS [WAC 05 089 75716], in accordance with section 244(c)(2)(B) of the Act, because he found that the applicant had been convicted of two misdemeanors in the State of California, making her ineligible for TPS. The applicant filed a timely appeal. In a decision dated March 21, 2006, the AAO dismissed the appeal on the re-registration application and noted that the director should also have withdrawn the applicant's previously granted TPS. On May 24, 2006, the director issued a Notice of Withdrawal, citing the two misdemeanor convictions as making the applicant ineligible for TPS under 8 C.F.R. § 244.4(a). The applicant appeals the decision to withdraw her previously granted TPS.

The regulation at 8 C.F.R. § 244.14(a)(1) authorizes the director to 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.

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 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.

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.

8 C.F.R. § 244.1.

The record includes a final court disposition of the Superior Court of California, County of Los Angeles, confirming that the applicant was arrested on or about September 14, 2000, in Los Angeles County and charged with two misdemeanor counts under the California Penal Code:

Count 1:	Section 484(A)	Theft of Property
Count 2:	Section 148.9(A)	Falsely Representing Self to Officer

On October 5, 2000, the applicant pleaded *nolo contendere* to both counts, whereupon the court entered dispositions of "convicted" on both counts. The defendant was placed on summary probation for two years and jailed for two days.

On appeal the applicant claims that the two offenses she committed should not be considered two misdemeanor convictions, for TPS purposes, because they occurred on the same day, stemmed from one specific occurrence, and were prosecuted in a single trial. The two offenses arose from a single scheme of criminal conduct, the applicant argues, thereby making her guilty of one crime, not two.

The applicant's assertion that her misdemeanors arose from a single arrest and, therefore, should be counted as a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and she pleaded *nolo contendere* to separate offenses. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. Therefore, the applicant has been convicted of separate and distinct offenses.

While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to the issue of his *removability* under section 237 of the Act, this determination has no bearing on her *eligibility* for TPS under section 244 of the Act or her *admissibility* under section 212(a) of the Act.

Since the record establishes that the applicant has been convicted of two or more misdemeanors committed in the United States, she is ineligible for TPS under section 244(c)(2)(B)(i) of the Act. Therefore, the director's decision to withdraw the applicant's previously granted TPS will be affirmed.

Beyond the decision of the director, the AAO notes that the applicant has failed to establish her identity and nationality in accordance with the evidentiary requirements of 8 C.F.R. 244.9(a)(1). As discussed in the AAO's previous decision, the record of proceeding includes a Form I-213, Record of Deportable Alien, showing that on October 14, 1993, the applicant was apprehended near San Ysidro, California, after her entry into the United States without inspection. At that time she claimed El Salvadoran nationality, not Honduran. On February 3, 1994, after the applicant failed to attend a hearing on her request for relief from removal, an Immigration Judge ordered the applicant deported from the United States to El Salvador.

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 that burden.

ORDER: The appeal is dismissed.