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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

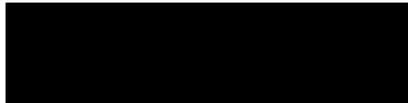
DATE:

[WAC 99 212 52477]

[EAC 06 223 71324]

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:

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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 August 16, 2000. The director subsequently withdrew the applicant's TPS on April 26, 2007, based on his criminal convictions, and because he failed to submit the final court dispositions of all of his arrests as had been requested in the Notice of Intent to Withdraw (ITW) dated July 6, 2006. Within the same decision, the director denied the applicant's re-registration application, filed on May 11, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 223 77324, because the underlying TPS was withdrawn.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant requests reconsideration because his "problems were in the pass," and he now has a family and he has amended his life.

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.

The record reveals the following offenses:

- (1) The applicant submitted the records of the Superior Court of California, County of Fresno, under Case No. [REDACTED] indicating that on July 9, 1998, the court dismissed the applicant's charges for VC 23152(b) [driving with .08 percent blood alcohol level or more]; VC 23152(a) [driving under the influence of drug/alcohol]; and VC 12500(a) [driving without a valid driver's license].

- (2) On May 18, 1999, in the Municipal Court of California, County of Monterey, Salinas, Division, [REDACTED] (arrest date May 17, 1999),<sup>1</sup> the applicant was indicted for Count 1, personate to make other liable, 529.3 PC, a misdemeanor; and Count 2, public intoxication: drugs/alcohol, 647(f) PC, a misdemeanor. On May 26, 1999, the court amended the complaint to add Count 3, false identification to specific peace officers, 148.9(a) PC, a misdemeanor. The applicant entered a plea of *nolo contendere* as to Count 3. He was placed on probation for a period of 3 years, ordered to spend 15 days in jail, and pay a fine of \$350. Counts 1 and 2 were dismissed.
- (3) On June 15, 1999, in the Municipal Court of California, County of Monterey, Salinas Division, [REDACTED] (arrest date June 13, 1999), the applicant was convicted of public intoxication: drugs/alcohol, 647(f) PC, a misdemeanor. He was placed on probation for a period of 3 years, ordered to spend 3 days in jail, and pay a fine of \$100.
- (4) On December 28, 2005, in the Superior Court of California, County of Monterey, [REDACTED] (arrest date December 22, 2005), the applicant was convicted of theft: personal property, 484(a) PC, a misdemeanor. He was placed on probation for a period of 3 years, ordered to spend 7 days in jail, and pay a fine of \$400.
- (5) The Federal Bureau of Investigation fingerprint results report indicates that on December 30, 2005, in Fresno, California, the applicant was arrested for Count 1, driving under the influence of alcohol/drugs; Count 2, failure to appear, written promise; and Count 3, driving without a license. The final court disposition of this arrest is not contained in the record.

The applicant is ineligible for TPS due to his three misdemeanor convictions (Nos. 2, 3, and 4 above), and because he failed to provide the final court disposition of his arrest (No. 5 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 applicant's TPS 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.

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<sup>1</sup> The director erroneously listed the date of this arrest as May 17, 1995.