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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

[SRC 99 194 50018]

Office: VERMONT SERVICE CENTER

Date: FEB 26 2008

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 Director, Texas Service Center (NSC), approved the initial application. The director, Vermont Service Center (VSC) subsequently withdrew the approval of the application and denied a re-registration application, which is now before the Administrative Appeals Office (AAO) 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.

The director found that the applicant did not comply with re-registration requirements because he failed to provide a requested court disposition, denied the re-registration application, and, withdrew the approval of the initial application.

On appeal, the applicant submits the requested disposition and asserts that he is eligible for TPS.

The director may withdraw the status of an alien granted TPS 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). The director determined that the applicant abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

An alien shall not be eligible for TPS 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 reflects that the director, NSC, approved the applicant's initial application on April 7, 2000.

On June 10, 2006, the applicant submitted an application for re-registration. On February 8, 2007, the director requested that the applicant submit a certified judgment and conviction document for an arrest on February 19, 2006, by the Florida Highway Patrol, for 1) DUI; 2) Speeding; 3) Improper Lane Change; and, Driving While License Suspended Without Knowledge. The request was sent to the applicant's former attorney, [REDACTED]. The applicant did not respond to the director's request.

On June 22, 2007, the director found that the applicant had failed to comply with re-registration requirements because he failed to provide the requested court disposition. The director denied the re-registration application, and, withdrew the approval of the initial application.

On appeal, the applicant asserts that he did not receive the director's request and submits the requested court disposition and other documentation, including his Florida Driving Record, issued on June 5, 2007.

The disposition for the February 19, 2006, arrest reflects the following:

1. The Broward County Court, in Broward County, Florida, found the applicant guilty of one count of Driving Under the Influence (DUI), under FL § 316.193-(2)(a)(2)(a).

A first or second conviction for DUI in Florida is classified as a misdemeanor. Under FL § 316.193-(2)(a)(2)(a), a first DUI conviction can result in a sentence of not more than six months imprisonment. The applicant has provided the requested disposition. This documentation establishes that he has been convicted of one misdemeanor, which, by itself, does not preclude him from TPS eligibility. As the applicant did not receive the director's original request for the disposition, the director's decision to deny the re-registration application and withdraw the approval of the initial application on this ground is withdrawn.

The application cannot be approved, however, because the record contains evidence of other arrests and convictions.

First, the results of a fingerprint analysis performed by the FBI in conjunction with this application indicate that:

2. On May 6, 2007, the Broward County Sheriff's Office arrested the applicant for Driving While License Suspended (DWLS).

Second, the applicant's Florida Driving Record submitted by the applicant on appeal contains information about the applicant's February 19, 2006, arrest, but also indicates that:

3. On June 24, 2006, the Dade County Court, in Dade County, Florida, found the applicant guilty of DWLS; and,
4. On October 27, 2006, the Palm Beach County Court, Palm Beach County, Florida, found the applicant guilty of DWLS.

In Florida, first and second convictions for DWLS are classified as misdemeanors. A third conviction for DWLS may be classified as a felony of the third degree and may result in a term of imprisonment not exceeding five years and in the suspension of the individual's driver's license for five years. The applicant's driving record indicates that on February 13, 2007, his driver's license was revoked for five years. Therefore, the applicant's first two convictions for DWLS are misdemeanors for purposes of determining TPS eligibility.

The applicant's third conviction for DWLS is a felony for purposes of determining TPS eligibility. Including the previously mentioned DUI conviction, the applicant has been convicted of three misdemeanors and one felony and is therefore ineligible for TPS.

An alien applying for TPS 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.