



U.S. Citizenship
and Immigration
Services

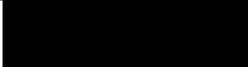
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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 22 2008**

[SRC 99 16053218]

INRE:

Applicant:



APPLICAnON:

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

John H. Vaughan
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of the application was withdrawn by the Director, Vennont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 withdrew approval of the applicant's TPS because he found the applicant ineligible due to his having been convicted of two or more misdemeanor offenses committed in the United States.

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).

On appeal, counsel for the applicant submits a brief and additional documentation.

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 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 reveals that the applicant has been convicted of the following misdemeanors under Tennessee law:

- (1) On May 8, 2001, of Driving Under the Influence (DUI), for which he received a jail sentence of 11 months and 29 days (11 months and 27 days suspended), 11 months and 29 days probation, and revocation of his driver's license for 1 year.
- (2) On February 9, 2006, of Reckless Driving, for which he received a jail sentence of 30 days (suspended) and a \$530.00 fine.

The record also indicates that the applicant has been convicted of Refusal to Submit to a BAC Test, an infraction under Tennessee law.

On appeal, counsel for the applicant asserts that the applicant's refusal to submit to a BAC test is not classified as a misdemeanor and is not subject to jail time, and that the applicant's guilty plea to reckless driving should not be considered a misdemeanor because it is analogous to a speeding ticket or other regulatory offense that is typically known as an "infraction." Counsel is correct that the Refusal to Submit to a BAC Test is not punishable by any jail time under Tennessee law, and is, therefore not a misdemeanor for immigration purposes.

However, DUI and Reckless Driving are both punishable by more than five days in jail under Tennessee law. Therefore, it is concluded that the applicant's convictions in Nos. 1 and 2, above, qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, 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 approval of 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.