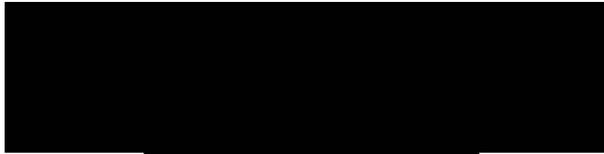


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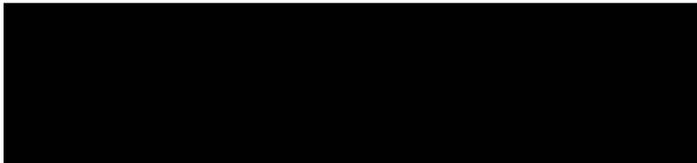
DATE: JAN 24 2008

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DISCUSSION: Approval of the application was withdrawn by the Director, Yermont Service Center (YSC).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

The applicant is 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.

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, the applicant submits a brief statement 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. 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**, [emphasis supplied] 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**, [emphasis supplied] 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 three offenses in the State of Florida, consisting of the following:

- On October 14, 2003, in Orange County – Driving While License Suspended, a 2nd degree misdemeanor;
- On March 6, 2006, in Orange County - Operating a Motor Vehicle Without a Valid Driver's License, a 2nd degree misdemeanor;
- On February 15, 2007, in Osceola County – Driving While License Suspended / Habitual Offender, a 3rd degree felony.

On appeal, the applicant requests that his case be reviewed because he was never sentenced to more than two days in jail for each of the convictions noted above. As the regulation at 8 C.F.R. § 244.1 makes clear, however, the crucial factor is not the jail term the applicant actually received for each of his convictions, but the maximum sentence he could have received under Florida law for each conviction. The Florida criminal sentencing code provides that 2nd degree misdemeanors are punishable by a maximum term of 60 days in prison, while 3rd degree felonies are punishable by a maximum term of five years in prison. Florida Statutes, section 775.082(4)(b) and 775.082((3)(d).

Consistent with Florida law, the applicant's convictions also constitute two misdemeanors and a felony for TPS purposes, as defined in 8 C.F.R. § 244.1. Under section 244(c)(2)(B)(i) of the Act, therefore, the applicant is ineligible for TPS.

Accordingly, 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.