

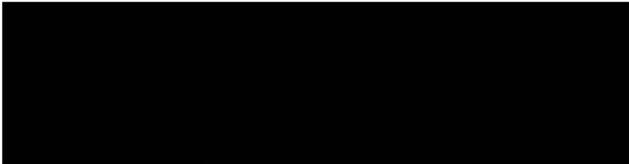


U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **JUL 07 2008**

[EAC 08 027 50965, *appeal*]
[SRC 9911252381]

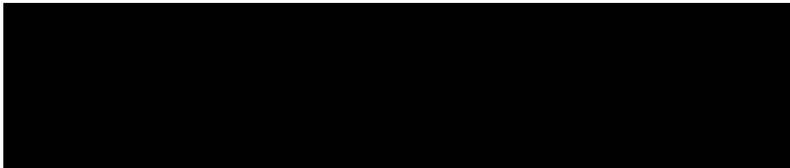
INRE:

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

Robert P. **Wiemann**, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected **Status (TPS)** was withdrawn by the Director, Vennont Service Center, and is now before the Administrative Appeals Office on appeal.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 TPS on August 5, 1999. The director subsequently withdrew the applicant's status and denied the re-registration application on November 7, 2007, when it was determined that the applicant had been convicted of three misdemeanors in the United States.

On appeal, counsel acknowledges that the applicant was convicted of three misdemeanors, but argues that they should be merged because they arose out of a single scheme of criminal misconduct and because all three counts were issued on the same day. Therefore, counsel concludes that the applicant did not commit three separate misdemeanor crimes but, rather, was convicted of one criminal act. Counsel states that since the applicant committed criminal traffic violations of which the maximum sentence for all three counts would have been 180 days (60 days maximum for a 2nd degree misdemeanor), the sentences in their **aggregate** are less than five **years** and the applicant is still admissible.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the **status** was **granted**, or if he or she becomes ineligible for TPS. 8 C.F.R § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations at 8 C.F.R § 244.2, provide that an applicant 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or **termination** of conditions described in **paragraph** (t)(2) of this section.

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 the regulations at 8 C.F.R § 244.4(a).

The regulations at 8 C.F.R § 244.1 define "felony" and "misdemeanor" as:

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.

On February 5, 2002, the applicant was convicted by a Judge in the Broward County Court of the State of Florida, of unlawful alteration of a vehicle tag, driving on a suspended driver's license and using an unlawful license tag with a sticker attached, all misdemeanors.

On **appeal**, counsel acknowledges **that** the applicant **was** convicted of three misdemeanors, but argues **that** they should be merged because they arose out of a single scheme of criminal misconduct and because all three counts were issued on the same day. Therefore, the applicant did not commit two separate misdemeanor crimes but, rather, **was** convicted of one criminal act.

That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" is relevant when applying other sections of the Act, this determination has no bearing on his eligibility for TPS under section 244 of the Act. According to the court disposition, the applicant was charged with three separate offenses and he was convicted of each of the three offenses. Therefore, the applicant had been convicted of three separate and distinct misdemeanor offenses. Moreover, Congress did not make any special allowances for TPS applicants who had been convicted of multiple counts under the same criminal case.

On appeal counsel states that since the applicant committed criminal traffic violations of which the maximum sentence for all three counts would have been 180 days (60 days maximum for a 2nd degree misdemeanor), the sentences in their aggregate are less than five years and the applicant is still admissible. Counsel is correct in his assertion that the applicant's criminal record does not render him inadmissible under Section 212(a)(2)(B) of the Act. However, this assertion does not address the applicant's eligibility for TPS.

As cited above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, and that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, Florida State law provides that violation any of the three listed offenses is punishable by up to 60 days of incarceration. Therefore, it is concluded that the applicant's conviction of each of the three crimes listed above qualify as a misdemeanor conviction as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of three 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 TPS and deny the re-registration application is 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.