

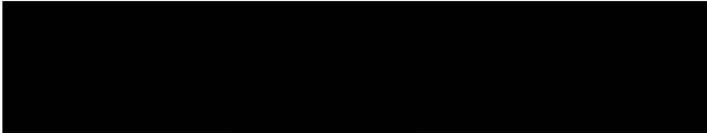


**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 01 2008**

[EAC 08 041 51168, *appeal*]

[WAC 99 093 51733]

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: SELF-REPRESENTED

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is stated to be a native and citizen of Honduras who was granted TPS on December 5, 2000. The director subsequently withdrew the applicant's status on November 5, 2007, when it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant argues that his conviction of August 12, 1986 (actually August 25, 1986), should not be used against him because of a decision dated October 30, 1996, that states that "All convictions that occurred prior to the enactment of the law shall not be used against an applicant."

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 (f)(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.

The record reflects the following offenses:

- (1) On August 25, 1986, the applicant was convicted by a Judge of the Superior Court of the County of Los Angeles, State of California, of disorderly conduct, a misdemeanor. (Case No. [REDACTED])
- (2) On June 14, 2001, the applicant was convicted by a Judge of the Superior Court of the County of Los Angeles, State of California, of driving while having a 0.08 or higher blood alcohol level, a violation of Vehicle Code Section (VCS), 23152(b), a misdemeanor. (Case No. [REDACTED])

- (3) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on March 15, 1987, he was arrested by the Hunting Park, California, Police Department for spousal beating.

On appeal, the applicant argues that his conviction of August 12, 1986 (actually August 25, 1986), should not be used against him because of a decision dated October 30, 1996, that states that "All convictions that occurred prior to the enactment of the law shall not be used against an applicant." However, he has not provided a copy of that decision for the record for a determination of its relevance to this matter. His statement does not mitigate the above convictions.

The final court disposition for his arrest listed as Item # 3 above has not been provided for the record by the applicant.

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 TPS and deny the re-registration application is affirmed.

Furthermore, the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R § 244.2(a) and § 244.9(a)(1).

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.