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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 99 129 52710]

Office: VERMONT SERVICE CENTER

Date: SEP 04 2008

IN RE: Applicant: [REDACTED]

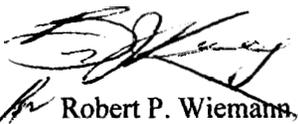
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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DISCUSSION: The applicant's Temporary Protected Service was withdrawn by the Director, Vermont Service Center. The application 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant had been convicted of a felony in the United States. The director, therefore, withdrew the applicant's Temporary Protected Status.

On appeal, counsel asserts that the applicant's conviction does not constitute a felony. In addition, counsel states that the applicant has not been served with notice of the withdrawal of his TPS pursuant to 8 C.F.R. § 103.5a.

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).

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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:....

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

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:

1. On July 30, 2000, the Oklahoma City Police Department arrested the applicant for “Leaving Scene of Accident Involving Injury”, a felony, and “Leaving Scene of Accident Involving Injury”, a misdemeanor.
2. On March 4, 2001, the Oklahoma City Police Department arrested the applicant for “No Driver License”, a misdemeanor, “DUI – Liquor or Drugs/APCV”, a misdemeanor, “Leaving Scene of Accident Involving Injury”, a misdemeanor, and “Transporting Open Container - Liquor”, a misdemeanor.
3. On June 18, 2001, the So Okalahoma Co Police department arrested the applicant for “DUI – Liquor or Drugs/APCV”.

Court documents indicate the applicant entered a plea of guilty on October 24, 2001 to “Leaving Scene of Accident Involving Injury”, “Transporting Open Container - Liquor”, “No Insurance Verification”, and “Failure to Stop.” The applicant was sentenced to a term of two years.

On appeal, counsel states that the applicant did not receive the August 30, 2007, Notice of Automatic Withdrawal of Temporary Protected Status, because the Oklahoma City office mailed the notice to the applicant’s old address. The Vermont Service Center mailed a Notice of Withdrawal to the applicant and previous counsel on December 5, 2007; however, the applicant’s new counsel filed a timely appeal on December 28, 2007, well before the January 7, 2008 deadline for filing an appeal. Therefore, the applicant received notice of the withdrawal of his TPS.

On appeal, counsel states that a person found guilty of "Leaving Scene of Accident Involving Injury" shall be punished by imprisonment for not less than ten (10) days nor more than two (2) years. According to counsel, this constitutes "an indefinite sentence" and the applicant has therefore not committed a felony; however, counsel agrees that the applicant could have been sentenced to two years imprisonment. Pursuant to 8 C.F.R. § 244.1, the applicant has been convicted of one felony offense in the United States and is, therefore, ineligible for TPS. Consequently, the director's decision to withdraw the applicant's TPS is affirmed.

An alien applying for Temporary Protected Status has the burden of proving that he 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.