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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE:

[EAC 99 159 50278]

Office: VERMONT SERVICE CENTER

Date: **AUG 04 2009**

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant claims to be a 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 record reveals that the applicant filed a TPS application during the initial registration period on May 11, 1999, under receipt number EAC 99 159 50278. The Director, Vermont Service Center, approved that application on May 26, 2000.

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).

The director withdrew Temporary Protected Status because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On appeal, counsel for the applicant claims that the applicant did plead guilty to one of the charges against him.

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. 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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On June 16, 2005, the applicant was arrested by the Suffolk County, New York Police Department for “Crim Contempt-1<sup>st</sup>: Phy Contact Class E Felony.”
- (2) On November 30, 2006, the applicant was arrested by the Suffolk County, New York Police Department for “Act In Manner Injur Child < 17 Class A Misdemeanor,” and “DWI – 1<sup>ST</sup> Offense Class U Misdemeanor.”

Pursuant to a letter dated October 10, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted a final court disposition. According to the submitted court dispositions, the director determined that on March 6, 2007, the applicant had pled guilty and been convicted of “Disorderly Conduct,” in relation to the arrest detailed in No. 2 above. The applicant also provided evidence that she had been arrested on July 22, 2004 for “Petit Larceny.” According to the director, the applicant pled guilty to this charge prior to this case being dismissed after an adjournment.

The director withdrew Temporary Protected Status because the applicant had been convicted of two misdemeanors

On appeal, counsel for the applicant states that the applicant did not plead guilty to the charge of “Petit Larceny.” According to counsel, when an attorney requests an Adjournment in Contemplation of Dismissal in criminal court, the defendant does not have to speak at all and does not have to enter a plea. Court records confirm the charges in No. 2 were dismissed. However, the court document submitted in relation to the felony charge detailed in No. 1 above, does not show the final disposition of this offense.

The applicant has failed to provide any evidence revealing the final court disposition of her arrest detailed in No.1 above. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Accordingly, the director’s decision to withdraw 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. Here, the applicant has not met this burden.

**ORDER:** The appeal is dismissed.