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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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[REDACTED]

FILE: [REDACTED]  
[SRC 99 230 51275]

Office: VERMONT SERVICE CENTER

Date: JUN 03 2009

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.

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 is 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 July 15, 1999, under receipt number SRC 99 230 51275. The Director, Texas Service Center, approved that application on January 27, 2004.

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).

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On August 6, 1999, the applicant was arrested by the Houston, Texas Police Department for "Assault Causes Bodily Inj." [REDACTED]
- (2) On June 13, 2005, the applicant was arrested by the Lawrenceville, Georgia Police Department for "Driving Under the Influence." [REDACTED]

Pursuant to a letter dated February 8, 2007, the applicant was requested to submit the final court disposition for the charge of "Driving Under the Influence," detailed in #2 above. The applicant submitted a Houston Municipal Courts Clearance letter which indicated that there were no outstanding warrants or any pending cases with the City of Houston Municipal Courts, and a probation completion letter dated February 19, 2007, which indicated the applicant had been sentenced to 12 months probation on June 14, 2005, in the City of Lawrenceville, Georgia. The applicant, however, failed to provide the requested final court disposition.

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 contends that the applicant has not been convicted of two misdemeanors. The applicant also provides the final disposition for the "Driving Under the Influence" arrest. According to that document, on June 14, 2005, the applicant pled guilty and was convicted of "Driving Under the Influence", a misdemeanor. Contrary to counsel's contention, United States Citizenship and Immigration Services (USCIS) records contain a copy of the final disposition of the "Assault Causes

Bodily Inj” arrest. According to that disposition, on August 16, 1999, the applicant pled guilty and was convicted of “Assault Causes Bodily Inj”, a misdemeanor.

The applicant is ineligible for TPS because of his misdemeanors convictions. Consequently, the director’s decision to withdraw the approval of the applicant’s temporary protected status will be affirmed.

Furthermore, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since December 30, 1998, and continuous physical presence from January 5, 1999, to the filing date of the TPS application. It is also noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien’s country of origin bearing photo and/or fingerprint to establish his nationality and identity.

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.