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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
and Immigration
Services

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FILE:

[EAC 99 240 51138]

Office: VERMONT SERVICE CENTER

Date: NOV 23 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The applicant submitted an appeal that was subsequently dismissed by the Director, Vermont Service Center. The case 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 August 13, 1999, under receipt number EAC 99 240 51138. The Director, Vermont Service Center, approved that application on December 10, 2001.

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 been convicted of two misdemeanors in the United States.

On the appeal, counsel for the applicant submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility, and requested that the appeal be reconsidered for humanitarian purposes to assure family unity. The Director, Vermont Service Center denied the appeal after determining that a favorable exercise of discretion is not warranted for humanitarian purposes to assure family unity, or because it is in the public interest.

On the present appeal, counsel states that the applicant's two convictions arose out of the same set of facts and the same circumstances and that the applicant should have only one conviction.

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 21, 1998, the applicant was arrested by the Raritan Township, New Jersey Police Department for "Possess Marijuana/Hash Under," and "Poss of Drug Paraphernalia." [REDACTED] and [REDACTED].
- (2) On July 1, 1998, the applicant was arrested by the Raritan Township, New Jersey Police Department for "Poss Weapon Unlawful Purpose." [REDACTED].
- (3) On October 2, 2001, the applicant was arrested by the Washington, New Jersey Police Department for "Stalking," "Entice, Lure Child by Various M," and "Criminal Sexual Conduct." [REDACTED].

Pursuant to a notice dated September 7, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested court documents. According to the final court dispositions, on December 4, 2000, the June 21, 1998 "Possession" charges were dismissed; on April 24, 2002, the applicant pled guilty and was convicted of "Harassment" and "Simple Assault by Physical Menace," both misdemeanors.

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 claims that the applicant's two convictions arose out of the same set of facts and the same circumstances. However, while the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Immigration and Nationality Act (the Act), this determination has no bearing on the applicant's eligibility for TPS. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. According to the court

disposition, the applicant was charged with two separate violations to which he pled guilty to two separate crimes and the court ordered two separate punishments. Therefore, the applicant has been convicted of two separate and distinct misdemeanor offenses.

On October 21, 2008, the applicant submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility. That application was subsequently denied on June 5, 2009.

The applicant is, therefore, ineligible for TPS because of his misdemeanors convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to withdraw TPS is affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.