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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:

[REDACTED]
[LIN 99 163 51105]

Office: VERMONT SERVICE CENTER

Date: OCT 30 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: 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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 May 11, 1999, under receipt number LIN 99 163 51105. The Director, Nebraska Service Center, approved that application on May 8, 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).

On appeal, the applicant states that the statute does not pertain to future crimes and convictions and that he had no convictions when he applied for TPS.

The director withdrew temporary protected status because the applicant had been convicted of two or more misdemeanors.

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 FBI report dated February 18, 2007, reveals the following offenses:

- (1) On August 29, 2000, the applicant was arrested by the Schuyler, Nebraska Sheriff's Office for possession of controlled substance and driving under the influence. [REDACTED]
- (2) On September 27, 2005, the applicant was arrested by the Grand Island, Nebraska Police Department for driving under the influence and leaving scene - property damage accident. ([REDACTED])
- (3) On February 2, 2007, the applicant was arrested by the Grand Island, Nebraska Police Department for driving under the influence liquor 2nd offense, leaving scene property accident, and consumption on public property. ([REDACTED])

The court documents from the County Court of Hall County, Nebraska, indicate that on October 17, 2000, the applicant was convicted of attempt of a Class 3A or Class 4 felony, a violation of section 28-201(4)(e), a misdemeanor; and on April 16, 2007, the applicant was convicted of driving under the influence -2nd offense, a violation of section 60-6,196, and criminal mischief, a violation of section 28-519, both misdemeanors.

The director withdrew temporary protected status because the applicant had been convicted of three misdemeanors.

On appeal, the applicant claims that the statute does not pertain to future convictions. According to the applicant, "[i]t is clear therefore, that the Statue [sic] under the above referenced Title, does not respectively includes any aliens that will commit any crimes since it is uncertain of whether in the future if such a person or individual will ever commit any crime at all." The claim by the applicant implies that once an applicant applies for TPS, he cannot be convicted of any crime and his TPS status will not be withdrawn. 8 C.F.R. § 244.4(a) clearly states, as shown above that 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. Furthermore, 8 C.F.R. § 244.14(a)(1) clearly states that 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. (Emphasis added). Thus, the applicant's contention is specious and without foundation.

The applicant is ineligible for TPS because of his misdemeanor convictions.

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.