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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]
[SRC 99 208 53138]

Office: VERMONT SERVICE CENTER

Date: SEP 25 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. Grisson
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 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 record reveals that the applicant filed a TPS application during the initial registration period on June 28, 1999, under receipt number SRC 99 208 53138. The Director, Vermont Service Center, approved that application on March 31, 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 determined that the applicant had been convicted of two misdemeanors in the United States and, therefore, withdrew the temporary protected status.

On appeal, counsel for the applicant states that the applicant has only been convicted of one misdemeanor.

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 November 7, 1999, the Tampa, Florida Police Department arrested the applicant for burglary-dwelling, a violation of FS 810.02, a felony, which was subsequently dropped by the state attorney's office and obstructing or opposing an officer without violence a violation of FS 843.02, a misdemeanor in the 1st degree. [REDACTED]

(2) On September 10, 2000, the Clearwater, Florida Police Department arrested the applicant for driving under the influence, a violation of FS 316.193, a misdemeanor. [REDACTED]

(3) On July 13, 2003, the Hillsborough, Florida Sheriff's Office arrested the applicant for disturb peace-disorderly conduct, a violation of FS 877.03, a misdemeanor in the 2nd degree. [REDACTED]

(4) On October 11, 2003, the Tampa, Florida Police Department arrested the applicant for battery (domestic violence), a violation of FS 784.03(1)(a) and (b), a misdemeanor in the 1st degree. [REDACTED]

Pursuant to a notice dated September 26, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted the requested court documents. In regards to the arrest in number one, the applicant pled no contest to violating FL statute 843.02 and was deferred to The Misdemeanor Intervention Program, which was successfully completed on or about June 28, 2001. In regards to the arrests in numbers two and three, the applicant was convicted of driving under the influence on November 16, 2000, and of disorderly conduct on September 22, 2003. In regards to the arrest in number four, on January 20, 2004, the charge was dismissed.

On appeal, counsel states that the applicant has only been convicted of one misdemeanor. However, the final court dispositions establish that the applicant pled *nolo contendere* on November 16, 2000 to the charge of driving under the influence, and pled *nolo contendere* on September 22, 2003 to disorderly conduct, both misdemeanors.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to

warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act. The court documentation submitted reflects that the applicant pled no contest to violating FL statute 843.02, the judge ordered some form of punishment to the charge above. Therefore, the applicant has been "convicted" of the misdemeanor offenses for immigration purposes.

The applicant is ineligible for temporary protected status because of his misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw temporary protected status 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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.