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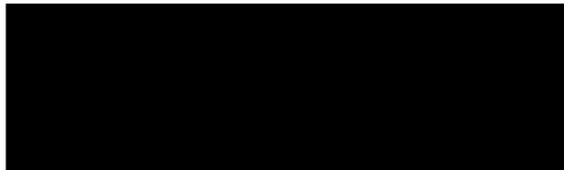
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
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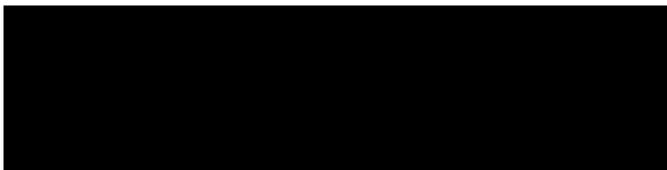
Office: VERMONT SERVICE CENTER

Date: **APR 05 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

IN 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The AAO will return the matter for further action by the director.

The applicant is 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 director withdrew TPS because he found the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel for the applicant asserts that the applicant has one misdemeanor conviction as the remaining conviction is considered a traffic infraction.

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).

"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 record dated June 26, 2006, reflects that the applicant was arrested by the Suffolk County Police Department of New York on July 28, 2003, for assault in the 3rd degree, and on February 5, 2005, for driving while intoxicated.

In response to a notice issued on June 26, 2007, the applicant submitted court documentation which revealed the following:

- On April 15, 2005, the applicant was convicted of assault in the 3rd degree, a violation of PL 120.00, a Class A misdemeanor. The applicant was ordered to pay a fine or serve time in jail and was placed on probation for three years.
- On March 28, 2005, the applicant pled guilty to a reduced charge of driving while impaired, a violation of VTL 1192.1. The applicant was ordered to pay a fine.

The director denied the application on July 26, 2007, after determining that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his convictions in New York of two misdemeanors.

The issue in this proceeding is whether New York offenses considered to be “traffic infractions” should constitute disqualifying convictions for “misdemeanors” in determining TPS eligibility under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4:

Traffic infractions committed in the State of New York are not considered “crimes” under state law, do not constitute misdemeanors or felonies, and may not be punished by more than 15 days of imprisonment. *See* New York Penal Law § 10.00(2), (4) and (6); New York Vehicle and Traffic Law §§ 155, 1800(b).

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services (USCIS) has determined that New York traffic infractions should not be considered disqualifying misdemeanors.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has met this burden.

The applicant has one misdemeanor conviction for assault in the 3rd degree and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Pursuant to the memorandum issued on January 17, 2010, a new biometrics fee shall not be required in this case, as the adjudication of the applicant's appeal was placed on hold pending issuance of this guidance. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The appeal is sustained and the matter is returned for further action by the director.