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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**

M1

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date **APR 05 2010**

[SRC 99 194 52006]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

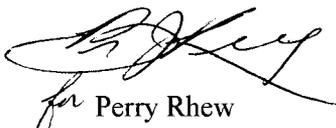
ON BEHALF OF APPLICANT:

[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).


for 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 June 11, 1999. The Director, Texas Service Center, approved that application on March 29, 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 withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that the applicant never received a Notice of Intent to Withdraw.

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 applicant answered “Yes” to Part 4, question 2a, indicating that he had “been convicted of any felony or two or more misdemeanors committed in the United States.”

The record reveals the following offenses:

(1) On April 25, 2007, the applicant was arrested by the Nashville, Tennessee Police Department for “License – Driving on Suspended Driver’s License.” [REDACTED].

(2) On April 30, 2007, the applicant was arrested by the Nashville, Tennessee Police Department for “License – Driving on Suspended Driver’s License.” [REDACTED].

(2) On October 16, 2007, the applicant was arrested by the Nashville, Tennessee Police Department for “Prostitution - Patronizing.” [REDACTED].

Pursuant to a notice dated January 23, 2009, the applicant was requested to submit the final court disposition for any and every charge against him. The applicant failed to respond to the notice.

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 for the applicant claims that the applicant did not receive the Notice of Intent to Withdraw and has fulfilled the requirements for a favorable adjudication of his TPS application. However, the notice was sent to the applicant’s address of record, in fact, it was sent to the same address the applicant lists on his appeal. There is nothing in the record to indicate that the notice was returned to USCIS by the U.S. Postal Service as undeliverable. The applicant submits the requested court dispositions on appeal. According to the final court dispositions, on May 21, 2007, the applicant pled guilty and was convicted of “License – Driver’s License,” a misdemeanor and on May 5, 2008, the applicant pled guilty and was convicted of “Prostitution – Patronizing,” a misdemeanor. Therefore, the applicant is ineligible for TPS because of his misdemeanor convictions. Consequently, the director’s decision to deny the application for temporary protected status will be affirmed.

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