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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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**FEB 23 2010**

FILE:

Office: VERMONT SERVICE CENTER

Date:

[EAC 99 209 53977]

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 office that originally decided your case. 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 case will be remanded.

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, under receipt number EAC 99 209 53977. The Director, Vermont Service Center, approved that application on December 18, 1999.

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 was inadmissible because of his criminal conviction. The director, therefore, withdrew the application.

On appeal, counsel for the applicant states that the applicant was not sentenced to 12 months incarceration and qualifies for the exception to the crimes involving moral turpitude ("CIMT") inadmissibility standard.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. Section 212(a)(2)(A)(ii) states in pertinent part:

- (ii) **Exception. Clause(i)(I)** shall not apply to an alien who committed only one crime if-
  - (I) The crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
  - (II) The maximum penalty possible for the crime of which the alien was convicted (or which the alien admits to having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and if, the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six (6) months (regardless of the extent to which the sentence was ultimately executed).

The record reveals the following offenses:

- (1) On October 13, 2007, the applicant was arrested by the Henrico County, [Virginia] Police Department for "Arson: Personal Property < \$200." This arrest was nolle prosequi.
- (2) On November 17, 2007, the applicant was arrested by the Henrico County, [Virginia] Police Department for "Petit Larceny :< \$200 Not From a Person." [REDACTED]

Pursuant to a notice dated December 22, 2008, 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 disposition, on January 3, 2008, the applicant was convicted of "Petit Larceny :< \$200 Not From a Person," a misdemeanor.

The director withdrew temporary protected status because the applicant had been convicted of a crime involving moral turpitude and was therefore inadmissible.

On appeal, counsel claims that the applicant had not been sentenced to 12 months incarceration and was therefore eligible for the CIMT exception. On appeal, the AAO determined that it was not clear whether the applicant had been sentenced to 5 months or 12 months incarceration because the document submitted by the applicant offered contradicting evidence. The AAO also determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. In a letter dated September 2, 2009, the AAO provided the applicant an opportunity to submit the certified court disposition for the November 17, 2007 arrest.

In response, the applicant submitted a copy of Virginia Courts Case Information Criminal Case Details Page which indicates that the applicant had been sentenced to 5 months incarceration. The applicant also submitted evidence of the applicant's requisite continuous residence and continuous physical presence.

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 United States Citizenship and Immigration Services (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 record does not reflect any grounds that would bar the applicant from receiving TPS. There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Thereafter, 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 case is remanded for appropriate action and decision consistent with the foregoing.